

MARINE MAMMAL PROTECTION LEGISLATION

HEARING
BEFORE THE
NATIONAL OCEAN POLICY STUDY
OF THE
COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
ONE HUNDRED SECOND CONGRESS
SECOND SESSION

JULY 23, 1992

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

61-918cc

WASHINGTON : 1993

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-040188-7

5261-41

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MARINE MAMMAL PROTECTION LEGISLATION

THURSDAY, JULY 23, 1992

U.S. SENATE,
NATIONAL OCEAN POLICY STUDY OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:33 a.m. in room SR-253, Russell Senate Office Building, Hon. John F. Kerry, presiding.

Staff members assigned to this hearing: Penelope D. Dalton, professional staff member, and Loretta A. Dunn, senior counsel; and John A. Moran, minority staff counsel.

OPENING STATEMENT OF SENATOR KERRY

Senator KERRY. This meeting of the NOPS will come to order. We are meeting this morning primarily to consider two legislative proposals that are designed to either reduce or to end the killing of dolphins in the course of commercial tuna fishing operations in the Eastern Tropical Pacific Ocean.

One bill is introduced by Senator Breaux, and that bill seeks to minimize dolphin deaths while continuing to rely on the traditional means of fishing them, which is deploying nets that encircle dolphins. And the other is a bill which I have introduced, companion to that in the House, which provides incentives—and I emphasize this—incentives to create an international moratorium, and obviously you would have to enter the international moratorium for it to be effective, in order to provide a viable economic alternative to the fishing method currently employed.

I think both bills recognize that an international response to the problem is required. Foreign fishermen now dominate the Eastern Tropical Pacific, and all but a handful of American boats have either been moved, sold, or reflagged, or have simply gone out of business. I think we now have seven boats left fishing.

Both Senator Breaux's bill and my own seek to help American fishermen by encouraging one single set of rules under which all countries are going to operate. I might say as an aside that this is not unlike the methodology that we sought in gaining a consensus internationally over a number of years in the driftnet fishing area. And I think we have seen other areas where, clearly, there is a need to develop some kind of international consensus for a set of rules.

This hearing and these two pieces of legislation have been made necessary, frankly, by the failure of the Marine Mammal Protection Act to achieve fully its goals set some 20 years ago of ending the

needless destruction of marine mammals. And as we all know, over the past 20 years or so, some millions, at least, of dolphins have been estimated to have been killed in fishing nets which are intentionally deployed to encircle them.

A great deal of progress has been made, and I think it is important to call attention to that, largely due to the efforts of the American industry. And I think it is clear by now that the law's original promise to reduce dolphin mortality to incidental levels approaching zero can probably never be achieved as long as one continues to fish on dolphin.

The bill that I have introduced seeks to take advantage of the best opportunity that we have ever had to achieve not just national but international support for an end to the practice of fishing on dolphin. And the opportunity has been brought about by the pressures of economic embargoes required under current law, by mutual desire on the part of our country and some of our neighbors to try to narrow the differences between us on environmental and conservation issues, and by the growing international resistance to purchasing dolphin-unsafe tuna.

I would like to stress that the bill that I have introduced is not aimed at just sort of making a statement or trying to send a message. It really is aimed at trying to get results. And we are not interested in trying to punish other nations for what they do not do in conjunction with us. We are really interested in trying to persuade them to agree to measures that will protect marine mammals and ensure fair treatment for American fishermen.

Now, I believe the approach in my bill, which is similar to that in the House, though a little bit different on the formula, is the best way to achieve that. And it is my understanding, obviously, that the administration has reached the exact same conclusion, and that the letters of intent that exist from Venezuela and Mexico indicate that other countries are prepared to move along this road also.

I know, as we enter into this process, that the west coast tuna fishery industry opposes such an approach, and it has opposed such approach in the past to enact or strengthen measures of the MMPA. I understand this and I cannot criticize them for seeking to protect their own interest, which is what they are trying to do.

But the fact is that it is not the U.S. Congress that has affected those interests. It is not the international community of governments, per se, that have altered the rules or the playing field here. It is really the American consumer who has already made it clear that business as usual in the Eastern Tropical Pacific is not acceptable.

And since April 1990, notwithstanding any efforts by the U.S. Congress or the administration, the three major processors for the American market have refused to purchase tuna for canning that is not dolphin-safe. European governments and processors seem poised to follow their lead.

So, these actions, and not any dictate of Congress, have caused a reduction in the size of the U.S. fleet. It is a consumer demand. It is a perceived need of the American consumer and others who have expressed their desire in the marketplace.

It is also argued by some that fishing on dolphin is the only economic way to catch large, yellowfin tuna. The fact is—and I emphasize this, and I have reviewed in the last days the 20-year history and the agreements which have been reached, and particularly which was reached in 1981 or so regarding research and the concomitant reduction of the killing numbers—the fact is that there has not been a really serious effort to find alternatives.

Past industry and Government-sponsored research efforts have focused primarily on refining the current fishing methods, rather than developing new ones. Even the recent National Academy of Sciences studies can only be considered a starting point. A moratorium on dolphin-unsafe methods accompanied by intensive research into dolphin-safe practices ought to make it clear within a matter of years whether a viable dolphin-safe tuna fishery in the ETP can be established.

If the answer to the question turns out to be yes, Americans would have an opportunity to reenter the fishery in a major way, thereby creating hundreds or even thousands of new jobs for American workers in fishing, ship repair, processing, and marketing.

Finally, it has also been argued that this is an issue just motivated by pure emotion, and I do not really agree with that. I do not think it is. There is a difference between the incidental killing of mammals from a method that you knowingly choose, realizing that there is a by-product of such killing, and the normal killing of mammals that takes place in the normal food chain of human beings. And I think most people are sensitive to and cognizant of that difference, and that is part of what has motivated the consumer demand that exists in this country.

Now, I do not approach this unmindful of the jobs that are stake, and of the interests that we have in terms of fishing, nor even of the difficulties that exist in creating this international agreement or playing field. Obviously, if you do not have the playing field rules agreed on, you are unilaterally disadvantaging our people. It does not make sense to do that. But at the same time, there is every indication that the playing rules can be reached, and it is my hope we will explore that today in the course of this hearing.

Mr. Chairman, your comments, please.

OPENING STATEMENT OF SENATOR HOLLINGS

Mr. CHAIRMAN. Good morning. Some 20 years ago, the Senate Committee on Commerce, Science, and Transportation completed action on benchmark environmental legislation, the Marine Mammal Protection Act of 1972—MMPA. The MMPA has become a cornerstone of U.S. environmental policy. It also represents an amazing success story. At the time the committee began work on the bill more than two decades ago, some 300,000 to 400,000 dolphins were being slaughtered yearly by tuna fishermen in the eastern tropical Pacific (ETP). With strict implementation of the MMPA and by strengthening it over the years, the number of dolphins killed in this fishery has been reduced to about 27,500 animals in 1991.

Furthermore, the American public also has stepped forward and clearly shown, through letters, and indeed their consumption habits, that they will not tolerate the needless slaughter of marine mammals. In fact, consumers worldwide, when given a choice, have

rejected the needless slaughter of marine mammals. This strong stance led three major tuna processors, Bumble Bee, Chicken of the Sea, and Starkist, to announce that they would no longer sell "dolphin-unsafe" tuna in 1990.

However, in August 1991, a three-person GATT panel met behind closed doors to determine that the enforcement provisions of the MMPA, which allow the Secretary of Commerce to embargo tuna from countries that do not make similar efforts to prevent dolphin mortalities, were inconsistent with the GATT. I strongly opposed that decision, and was joined by 62 of my colleagues in asking the administration to block the GATT report.

In the 9 months since we sent that letter to the President, the environmental community and the administration have been discussing legislation to move us toward zero dolphin mortality in the ETP. Today we are considering the results of those efforts, embodied in the bill Senator Kerry introduced yesterday, as well as a bill introduced by Senator Breaux to implement an Inter-American Tropical Tuna Council tuna fishing program in the ETP.

I thank our witnesses for being here today, and I look forward to hearing their testimony.

Thank you, Mr. Chairman.

Senator KERRY. Let me just say that, regrettably, after this hearing was set I was called to the White House this morning at 11:20 a.m., and I must be there. Senator Breaux will chair after about 10:50 a.m., after we have proceeded, and hopefully we will get as far as we can. But I appreciate his willingness to do so, and I ask your understanding in recognizing my need to not be able to be there then.

Senator Breaux, do you have any opening statement you would like to make at this time? If not, let me welcome our first panel. We are delighted to have a Member of the other House, Congressman Porter Goss, here. And we appreciate very much your patience, Congressman, and we are delighted to have you here as a sponsor of legislation and look forward to your testimony.

STATEMENT OF HON. PORTER J. GOSS, U.S. REPRESENTATIVE FROM FLORIDA

Mr. GOSS. Thank you very much, Mr. Chairman. I am delighted to be here and I apologize that I may be dragged away for a vote on the House floor in advance, in case that should transpire.

I also want to note for the record that Chairman Studds would want to be here. Unfortunately, he had an impossible conflict but he will have testimony for your record, which will be submitted, I understand, at a little later date if that is possible.

Senator KERRY. Without objection, so ordered.

Mr. GOSS. And I would like to ask that my prepared testimony also be submitted as written, and has been provided to your committee staff.

Senator KERRY. Without objection, your full statement will be in the record.

Mr. GOSS. Thank you very much. I think that your opening remarks were extremely eloquent and exactly on target. Because they very much parallel what I had to say, and very much parallel what has gone on in the House of Representatives, in the other body,

with regard to this, in our Merchant Marine and Fisheries Committee as we have gone along. The issues that you have raised in your opening remarks are indeed the issues, and we have given them careful attention in our deliberations on the other side of the Hill.

I think that the essence of where we are today is simply this: We have a moment now, an open window of opportunity with other nations that we do not normally enjoy, to accomplish what we have been trying to accomplish for the past 20 years in the ETP. And that is, essentially, dolphin-safe fishing in the tuna area.

I think it can be done. There are promising breakthroughs, and now this legislation—I refer to H.R. 5419—clearly provides incentives for more work on areas that have shown some signs of hope. Things like FAD's—which I will not testify that I understand why tuna fish are attracted to FAD's, if they are, or under what circumstances, but those who know better feel that there is some hope in this approach. I understand there are major breakthroughs in technology which may be applied using satellite-type electronics and wizardry to benefit our fleets.

These are the kinds of things out there that I think are going to lead to your conclusion that we, in fact, are going to make a great many more jobs and a great deal more productivity for our American fisheries if we ~~do the right thing~~ and find the right ways that accomplish the job of the fishery and at the same time remove what many of us feel is unnecessary waste of natural resources, and that is this brutal by-catch from the ETP tuna setting on practices that are still there, but are certainly not to the degree evident as they were. And that is promising, which means that some of the things in the past we have done are working, and we are going in the right direction.

And this, to me, is another step on that trail in the right direction. And perhaps—perhaps it will be the last step, if all of the hopes that we have and the incentives we provide in this legislation come to pass.

I particularly want to point out that some of the areas that have been raised that we give particular attention to in our committee work, was whether or not we have commitments of the Mexican and Venezuelan Governments, because they are particularly required in the ETP because of the circumstances of the fishery. And without those commitments, I would agree this timing would not be as opportune as it otherwise seems.

I have in front of me a U.S. Department of State document, which I am sure that the committee has, or will have before all your witnesses are through today, which is signed by Janet Mullins, Assistant Secretary for Legislative Affairs, which says: "We have the commitments of the Mexican and Venezuelan Governments, based on the H.R. 5419 as introduced."

I think those are similar commitments to the ones that you have referred to and understood in your opening remarks, Mr. Chairman. I think that is extremely important, and I know of no change in that.

Second, I think it is very clear that other nations that are already using dolphin-safe methods in the ETP, Ecuador and Panama particularly, are reflective that this is something that is very doable. Spain, which I understand is Mexico's biggest market for

tuna, has announced its commitment to going dolphin-safe also, I understand. And this subject is topical before the European Community, and they are going in the same direction—because of consumer demand, I suspect—that we have gone in this country.

I think these are all very, very positive steps. I think that the legislation, H.R. 5419, is easily matchable to the efforts that you are making on this side of the Hill. And I think that the other remarks that I otherwise would have made, you have covered in your opening remarks and are included in my written testimony. So, because of the time constraints on your schedule, I will at this time open myself up for any questions.

[The prepared statements of Mr. Goss and Mr. Studds follow:]

PREPARED STATEMENT OF MR. GOSS

Mr. Chairman, I appreciate the opportunity to appear before this Committee to discuss H.R. 5419, the International Dolphin Conservation Act of 1992. I think I speak on behalf of Representatives Gerry Studds of Massachusetts and Barbara Boxer of California, who are also sponsors of H.R. 5419, when I say that this bill offers the strong hope that before the year 2000, intentional setting on dolphins to harvest yellowfin tuna will be a method of the past. As a result, dolphin mortalities associated with this fishery will be reduced to zero, which was the goal that we set for ourselves twenty years ago with the enactment of the Marine Mammal Protection Act (MMPA).

Many of you on the panel may be familiar with the calls for dolphin protection that have been echoing within these walls for the past twenty years. Such calls initially rallied Congress to enact the Marine Mammal Protection Act of 1972, which serves as the legislative foundation for most of our current marine mammal conservation and protection efforts. Even though we have seen much progress in this area, when looking back over the past twenty years, it becomes apparent that improvements in the MMPA are necessary.

Specific goals require specific methods—and maybe that is what the MMPA has been lacking up until now. For example, in stating the goal as reducing the dolphin mortality rate to insignificant levels approaching zero, the MMPA fails to answer two pertinent questions: when and how?

According to 1981 data, approximately 20,000 dolphins were killed by United States tuna fishermen, which is a significant reduction compared to the 360,000 dolphins that were killed in 1972. And in 1990, only 5000 dolphin mortalities were attributed to the U.S. tuna fleet in the Eastern Tropical Pacific (ETP). In light of these numbers, one can easily argue that such a reduction marks a solid commitment taken on the part of U.S. tuna fleet to adhere to the general provisions of MMPA. But it still doesn't answer the question of when can we hope to achieve our ultimate goal.

As you probably know, since 1981, the U.S. tuna fleet has been permitted by general permit to "take" 20,500 dolphins a year. The general permit was granted to assist the U.S. tuna fisherman who were being forced to compete against countries operating without constraints in the ETP.

In response for the market demand for dolphin safe tuna, most of the U.S. vessels in the ETP left for the Western Pacific over the past five to six years, leaving seven U.S. boats behind. One might expect the seven remaining vessels to take full advantage of the general permit, but instead much of their efforts have focused on seeking alternative measures and increasing their effectiveness in the world market. And as a result, the domestic kill-per-set ratio fell to a new low in 1988. In fact, the kill-per-set ratios of the United States and foreign fleets became so increasingly divergent, it was soon realized that we can lead the international movement of dolphin protection by requiring other countries to fall in line with our fishing methods.

With the adoption of the 1988 comparability amendments to MMPA, Congress made a fair attempt to level the playing field by prohibiting the importation of any tuna caught by a country whose average rate of mortality was not comparable to that of the U.S. fleet. It was hoped that such trade restrictions would serve as an incentive for countries to implement even better fishing techniques. However, while reductions were substantial over the following two years, many countries failed to meet these demands. As a result, trade sanctions were subsequently imposed.

Mr. Chairman, the threat of sanctions did work, although not quite to the levels which we would have like to achieved. And, up until a year ago, they were probably

our strongest tool. But as you know, last year's GATT ruling has required the United States to change its tack, and take a new course toward leading this international approach toward a zero mortality rate.

In its ruling that the U.S. trade embargoes were in violation of the GATT agreement, the international dispute panel noted that ruling in favor of such unilateral restrictions could seriously undermine GATT and other trade negotiations in the future. Furthermore, the panel held that the United States did not prove that it had "exhausted all options reasonably available to it pursue its dolphin protection objectives through measures consistent with the General Agreement, in particular through the negotiation of international cooperative arrangements."

Perhaps the GATT ruling was a blessing in disguise. By requiring us to exhaust all of our options, it required us to reexamine the MMPA and iron out its deficiencies. Thus, H.R. 5419 is, more or less, the product of this GATT ruling.

Mr. Chairman, the timing of this bill could not be more auspicious, and for the first time an international agreement to save the dolphin is easily within our reach. There exists now an unprecedented global demand for dolphin safe tuna, with foreign governments such as Mexico and Venezuela giving us solid commitments to sign such an accord. These governments will join forces with countries such as Ecuador, Panama, and Spain who have already adopted dolphin safe policies of their own.

The heart of H.R. 5419 is its establishment of an international agreement to a five year moratorium on the intentional setting on dolphins to capture yellowfin tuna. The commitments are already there, but the bill provides an additional lure in the form of funding for research. As the international market demand for dolphin safe tuna grows, the strongest incentive of all is its creation of a level playing field for all tuna fleets.

Skeptics of H.R. 5419 raise the concern that countries may commit solely for the purpose of being able to fish dolphin "unsafe" for the next two years without the threat of U.S. embargoes. But H.R. 5419 addresses this concern in the following manner. Any country that reneges on its commitment will not only be subject to the tuna embargo provisions that currently exist in the MMPA, but additional sanctions on all fish products will also be imposed. H.R. 5419 assures that the financial costs of such an embargo will certainly outweigh the short-term gains of non-compliance.

Other questions that have been raised relate to the impact this piece of legislation will have on the U.S. tuna fleet. Allegations that H.R. 5419 will effectively eliminate the U.S. tuna fleet are unsubstantiated. It is true that only seven U.S. flag tuna boats are still fishing in the Eastern Tropical Pacific (ETP), but forty-five U.S. vessels that previously operated in the ETP are now thriving in the Western Pacific. And of these seven vessels left in the ETP, we know that not all of the tuna harvesting from these vessels is dolphin unsafe. Perhaps it is time for the remaining seven vessels to further these efforts by employing alternative methods to encirclement or follow suit with the rest of the fleet.

This is not such an unreasonable request; the research conducted under the auspices of MMPA have been rewarded with favorable results. Longline fishing is an option, but it has become clear that this method does not provide an economically viable alternative. But other alternative methods such as fish aggregating devices (FADs) and the long range possibility of using satellite oceanographic techniques have shown continued promise. FADs don't offer the perfect solution yet, but we have two years to get us there as well as to explore additional options.

Mr. Chairman, H.R. 5419 has the support of a diverse range of interests, and it's time to bring this aggregation formally together. After twenty years of searching for a workable solution, the scientific foundation has been laid to ensure that a zero dolphin mortality rate can be feasibly obtained in the next two years without endangering the United States position in the international tuna market. As I stated earlier, H.R. 5419 brings with it a level of fairness not yet seen in past MMPA efforts to eliminate the intentional encirclement of the dolphin. I have high hopes for its enactment.

PREPARED STATEMENT OF MR. STUDDS

Thank you, Mr. Chairman, for placing my testimony into the record.

Twenty years ago this October, the Marine Mammal Protection Act was enacted into law. It was a landmark piece of legislation which responded to overwhelming evidence that some species of marine mammals were in danger of extinction. At the time, the report of the Committee on Merchant Marine and Fisheries stated that:

Recent history indicates that man's impact upon marine mammals has ranged from what might be termed benign neglect to virtual genocide. These animals,

including whales, porpoises, seals, sea otters, polar bears, manatees and others, have only rarely benefited from our interest: they have been shot, blown up, clubbed to death, run down by boats, poisoned, and exposed to a multitude of other indignities, all in the interests of profit or recreation, with little or no consideration of the potential impact of these activities on the animal populations involved.

One of the driving issues behind the passage of the CPA was the very issue before us today: the intentional encirclement of dolphins with tuna purse seine nets in the eastern tropical Pacific Ocean (ETP). Finally, after twenty years of controversy and acrimonious debate, we have the opportunity to resolve the tuna/dolphin Problem.

No other marine mammal issue has caused such tremendous public outrage, hundreds of cards, telephone calls, petitions and letters begging Congress to put a stop to this practice pour into the office of my Subcommittee on Fisheries and wildlife conservation each year. They come from virtually every state in the nation—not just from environmentalists, but from school children and from consumers who demand dolphin-safe tuna in the marketplace.

The National Marine Fisheries Service estimates that more than 6 million dolphins have died during tuna purse seine operations in the ETP since 1959. That number would probably be far higher if Congress had not stepped in and amended the NMPA in 1984 and again in 1988 to place greater restrictions on the U.S. tuna fishing industry. The implementation of those amendments has saved thousands of dolphins.

To their credit, U.S. tuna fishermen have made steady progress in reducing the dolphin kills by the U.S. fleet. But we have not halted the slaughter. Last year, 25,000 dolphins died in the ETP purse seine fishery, and one sector of the tuna fishing industry would now have us accept a proposal that sanctions the killing of an additional 75,000 dolphins by the end of the decade. A slaughter of that magnitude is simply not acceptable to the American people. I know that, many of my colleagues know it, and the tuna industry knows it.

The International Dolphin Conservation Act is the result of months of grueling negotiations among the interested parties. Never before in my long history with this issue have I been able to introduce a bill that had the support of the environmental community, their millions of members, and the Administration.

The opponents of this bill decry it as unilateral action. Let me assure you that nothing could be further from the truth. This bill is not a response to the demands of a few environmentalists, it is in tuna with a global movement that demands change, evident in the following actions:

- The governments of both Mexico and Venezuela, the two nations now responsible for most of the dolphin kill in the ETP, have committed to a global moratorium on setting nets on dolphins beginning in 1994.

- The tuna fleets of both Panama and Ecuador are already fishing dolphin safe.

- In June, the entire Spanish purse seine fleet signed agreements to prohibit fishing activities that endanger dolphins as well as agreeing to end all commerce in dolphin-unsafe tuna products. On July 7, Spain became a dolphin-safe country when the last of its major tuna canning companies joined the rest of the Spanish tuna industry in adopting dolphin-safe corporate policies. The most dramatic immediate result of this new policy was that a refrigerator vessel which arrived in Spain on July 4 carrying 2500 tons of dolphin-unsafe tuna from Mexico left port on July 7 having failed to find a buyer for its cargo.

- In Italy, more than 40 percent of the canning companies have committed to dolphin-safe policies.

- Just one week ago the European Commission, at the urging of Vice President Manuel Marin, the EC Commissioner responsible for Cooperation and Development of Fisheries, adopted a proposal for a regulation banning the use of purse seine nets by European Community vessels for tuna fishing in association with dolphins.

In effect, the actions of these other nations support not undermine the International Dolphin conservation Act. Following this nation's shameful performance at the United Nations Conference on Environment and Development in Rio, we simply cannot afford to back away from H.R. 5419 now.

Other opponents will claim that this bill destroys American jobs. In reality, the provisions of H.R. 5419 protect the more than 7000 American jobs in dolphin-safe tuna processing plants in Puerto Rico, California, and American Samoa. The bill also assures access for up to 55 vessels to the dolphin-safe tuna fishing grounds of the south Pacific through the year 2000 and, in effect, subsidizes this industry by continuing federal Foreign Assistance funding to support that access. Currently, 45 U.S. tuna purse seine vessels fish profitably and dolphin-safe in the south Pacific.

Finally, in order to counter the charges by the opponents of this bill that it will put other fishermen out of business, I wish to stress that H.R. 5419 is careful to

distinguish between the intentional encirclement of dolphins in the ETP fishery and the accidental take of marine mammals in other commercial fisheries.

Mr. Chairman, the seven U.S. vessels continuing to fish in the ETP by killing dolphins are clearly out of touch with the demands of American consumers. Since 1990, StarKist, Bumblebee, and Chicken of the Sea have purchased only dolphin-safe tuna for the American market. Pan Pacific, the last independent continental U.S. canner, is dolphin-safe. Kraft Foods, the largest purchaser of tuna for the U.S. institutional market, purchases only dolphin-safe tuna. The U.S. government is dolphin-safe. The current provisions of the MMPA are outdated, and the Act as it relates to this issue must be amended. The standard for the change is being set around the world, and our constituents demand that we respond.

Again, I thank you for allowing me to enter my testimony into the record of the hearing.

Senator KERRY. Thank you very much, Congressman. I appreciate your being here and appreciate your support of this. Let me just ask you very quickly—and we are under some time constraints because I am informed that Senator Breaux now also has some conflict and so we are going to try to have to move this along fairly rapidly.

However, that should not be that difficult because we are revisiting this area. This committee has met before on it and we are really talking about legislation that we have been aware of previously and I think we can focus very quickly on the differences.

One of the points raised by the U.S. fishermen in the ETP is hey look, OK, if you get and Venezuela and Mexico, but what about El Salvador, what about the other countries. How do you guarantee that there is really compliance here? We are just going to see a lot of other boats, Koreans or someone else, move in, and the result is going to be that it is one of these grand moves that simply leaves us out of jobs and we really do not have an enforcement mechanism.

What is your response to that?

Mr. GOSS. I think there are a couple. I think that the observer issue is one that is probably relevant, is the answer. And I think also that the direction that this Nation is going right now in trade agreements, with apparently the understanding of GATT and the negotiations that are going on there, I think those may be two answers that are going to resolve that problem. I also think that the marketplace is going to resolve that problem, as it seems to be resolving it in other areas of the world.

Senator KERRY. Is it fair, also, to say that the legislation really would not or should not take effect unless you have that kind of international guarantee so that there is not a unilateral?

Mr. GOSS. I think there has to be an international understanding and I think that there has to be a mechanism to enforce that understanding. I would say that without that, it is certainly not acceptable to put American industry or American jobs at sacrifice, allowing loopholes for other countries. No question about that, and I would not endorse such legislation that did that.

Senator KERRY. Senator Breaux.

Senator BREAUX. No questions.

Senator KERRY. Thanks very much Congressman, we appreciate it.

Mr. GOSS. Thank you very much, Mr. Chairman.

Senator KERRY. Ms. Wilson and Ambassador Colson. [Pause.]

Oh, he is here. I am sorry, is Congressman Cunningham here?

Congressman, I apologize. I did not know you were here.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Senator KERRY. I did not mean to gloss by you, I assure you. Thank you.

**STATEMENT OF HON. RANDY CUNNINGHAM, U.S.
REPRESENTATIVE FROM CALIFORNIA**

Mr. CUNNINGHAM. Mr. Chairman, this is so important. One of my best friends on the other side has got an amendment going through. And I have only missed two votes as a freshman Congressman, and I am going to miss this vote, because this is that important to me and this testimony.

Senator KERRY. Let me say to you Congressman, I know how—I mean we hate to miss votes over here too. If you want to go do it and come back, I would be perfectly happy to fit you in.

Mr. CUNNINGHAM. No, I want to get this done. I do not want to have it, sir.

Senator KERRY. OK.

Mr. CUNNINGHAM. And I would like you here because I understand that you have got to leave.

As I would like to give a little different perspective. I came here wide-eyed, bushy-eyebrowed, and expecting things to happen based on merit. And I have seen special interests, as everybody else has. I have seen political interests put first in a lot of cases. And I have seen smoke and mirrors and I tell you, this is one of the most discouraging jobs that I have ever had in my life and I am sure that, at times, you feel the same way, sir.

But I sit through the House committee meetings, and I sit on Merchant Marine and Fisheries, and I heard the same claims that we had the support of Venezuela, Vanuatu, and Mexico.

I have in my hand—and if you noticed a good friend of mine, Porter Goss, who happens to be on the other side of the issue on this, state that he would change his mind if we did not have Venezuela and Mexico's position. Well, I have a letter. It was delivered this morning to Secretary Baker from Venezuela saying they do not support this position and this bill. Mexico, I talked to—I live in San Diego, I go down to Mexico all the time. I know Camacho personally and his boss, I have a letter from his boss in Mexico saying they do not support it.

And also I have a letter here from Vanuatu. These are the same countries which were cited as supporting the bill in subcommittee, which was misleading and incorrect. And I sat and witnessed that where we say that we want to protect not only the tuna life, but dolphins as well.

And when you have an industry that has bent over backward—they used to kill thousands and thousands of dolphins. And in your testimony you would say well, under the Breaux bill, that it would be business as usual or traditional. It is not traditional. They have gone at great lengths to make changes to where the boats in San Diego, as a matter of fact, when they backed down—they have caught thousands of dolphins this year, sir, and they have killed only 1,000 of these.

And when you take an industry that has bent over backward to comply with what we want to do, which is have dolphin-safe fishing, and we penalize them from 157 to 7 boats, that is wrong.

We want to have an international understanding and if they do not reach that understanding we are going to apply sanctions—to me, as a former businessman and a military man, that if there is another and a better way to build the mousetrap, that is what we ought to do. In my opinion that is the Breaux bill, because those nations agree with that bill and will abide by it. But as I stated I have letters from Venezuela, Vanuatu, and as recent as this morning from Mexico, stating they do not support these positions, sir.

And when we set aside the Academy of Science and Government inspectors who ride these boats—these are not my figures, they are not congressional figures. And I would ask the chairman, have you ever been on one of these boats, sir?

Senator KERRY. No, I have not.

Mr. CUNNINGHAM. I have an invitation from the tuna fishermen for you to ride it and we will give you a little patch for the back of your ear, sir, so you do not get seasick.

What we need is a position that is flexible, both with environmentalists, with animal rights groups—and no one wants to kill dolphins. But if we set hard, fast, and hit each other in the head with hatchets all the time, we are never going to go in any direction or make any progress that is beneficial.

[The prepared statement of Mr. Cunningham follows:]

PREPARED STATEMENT OF MR. CUNNINGHAM

I am strongly opposed to the International Dolphin Conservation Act of 1992, H.R. 5419, which will substitute a dubious, unilateral policy for a truly effective multilateral regime.

This piece of legislation would regulate the U.S. Tuna Purse Seine Fleet out of business by prohibiting them from encircling yellowfin tuna in conjunction with dolphin without any definite agreement that any other fishing nations would follow.

Indeed, I have a letter that was sent to Secretary Baker yesterday stating Venezuela's opposition to the language contained in H.R. 5419. "Based on the NAS and the IATTC assessment Venezuela is convinced that a moratorium on fishing in connection with dolphin in the ETP would be unwise and indeed, in light of the IATTC international agreement, could not be supported by Venezuela consistent with obligations as a member nation of the IATTC's convention." Colombia which fishes under the flag of Vanuatu has stated the same opinion in a letter.

This legislation completely ignores the outstanding record of dolphin mortality reduction by the international tuna fleet operating in the Eastern Tropical Pacific. Some 99.8 percent of all dolphins caught are safely released.

It also disregards the findings of the National Academy of Science report which concluded that there were in excess of 8 million dolphin in the Eastern Tropical Pacific alone, and that the best way for the United States to address the tuna/dolphin issue was to work cooperatively with the other fishing nations of the region to reduce the incidental take of dolphins.

More importantly, H.R. 5419 does not even acknowledge the recently concluded IATTC tuna/dolphin agreement which has been endorsed by all of the nations which fish in the ETP.

I do support the Breaux language. It supports the IATTC agreement that was ratified June 18th in La Jolla, California by 9 nations (Colombia, Costa Rica, Ecuador, Mexico, Panama, Spain, United States, Vanuatu, and Venezuela) and establishes a 7 year program that would effectively reduce dolphin take. The language also follows the Congressionally mandated National Academy of Science recommendations that I mentioned earlier.

Most importantly, this language would allow the U.S. tuna fleet to continue to operate, saving approximately 600 jobs and opening the door to create more desperately needed jobs in Southern California.

Senator KERRY. I appreciate your comments enormously. Let me just say to you that there is no approach here that is sort of hatchet-oriented or locked in cement. You know, I was talking as recently as yesterday with members of the industry and I am obviously sensitive to some of the arguments.

But it basically comes down to this. It is a question of whether or not some people feel that there has been a process of keeping faith with agreements that have been made in the past and with promises that have been made in the past to do a certain amount of research. In 198 , before I was here, before you were here, there was an agreement struck between the industry and the environmental community in which the industry agreed to a 20,000 annual kill quota in exchange for a major research effort into methods to reduce that mortality.

And the fact is that for a decade the quotas have been taken advantage of; the research has not been done. And when you say nobody wants to kill these little fellas, I mean the fact is that even in Senator Breaux's bill you wind up with an unacceptable level of kill. So, the bottom line here is really a distinction between those who believe that we should legitimately be trying to find a way to avoid kill, in other words to get down to zero level if you ever can. Now as long as you are fishing on dolphin, there are people who believe you cannot get to zero kill. And there has not been a sufficient level of effort to try to find out whether there is an alternative to fishing on dolphin. The National Academy of Science report, in fact, says it is the most commercially economical or viable method of doing it.

But that is obvious. We all know that. I mean, they really stated the obvious in the report. But they did not suggest, and they underscore the fact by suggesting ways in which we could research other methods, is that those are not known yet. And I think that is, sort of, the complaint here. And that is the dilemma we find ourselves in, whether or not there is a way to fish without the incidental kill.

Mr. CUNNINGHAM. Would the chairman yield?

Senator KERRY. Absolutely.

Mr. CUNNINGHAM. I understand exactly what you are saying. But when you have an industry that has gone to nearly zero and this is not an endangered species. If you think of the benefit to the millions and millions of people that receive food—you know we have people starving all over this world.

The industry has tried to comply with this, and I think done a very good job. When you have 99.8 percent—I would take that in an election, I would take it in a ball game bet or even a Presidential bet—then I think that we ought to take a serious look—and the same thing with the environmental rules.

If you take the actual reality, then you are going to hurt American fishermen in this bill. You are going to put a lot of people out of jobs. The other countries are not going to comply with it, where they will with Senator Breaux's bill. And my feeling would be to support Senator Breaux's bill, sir. And I support in concept what you are trying to do, Mr. Chairman.

Senator KERRY. Well, I have said at the outset—and I want to emphasize it—that if you cannot—I am not into passing pyrrhic

pieces of legislation. And I do not want to do something that winds up with a unilateral impact on it.

And I think critical to this—and I look forward to the administration's testimony—critical to this is the capacity for a real international level playing field to be created. Because if you cannot do that, you know obviously you have got a problem here and I accept that.

Mr. CUNNINGHAM. Yes, sir, I understand. I just do not believe in playing with people's lives to pass politically expedient GATT and trade bills; we do that too much in this country. And when there is rhetoric about looking at the little guy, looking at the middle-income people, and then we keep putting these folks out of work, it really hurts.

And, quite frankly, these folks are not even in my district. It is something I believe in, Senator.

Senator KERRY. I appreciate that.

Mr. CUNNINGHAM. And I am trying to fight for them.

Senator KERRY. Senator Breaux.

Senator BREAUX. No questions.

Senator KERRY. Thank you very much Congressman, I appreciate it.

Mr. CUNNINGHAM. Thank you, sir.

Senator KERRY. I appreciate your staying through the vote.

Ms. Wilson and Ambassador Colson.

Mr. CUNNINGHAM. I have those letters if you would like copies.

Senator KERRY. Yes, we are going to make the letters—I have a copy of the letters. I am not sure I have the one from Mexico; I do have a copy of the letter from Venezuela. And I will make that part of the record, without objection.

Also, I would like to, at the same time, make part of the record letters to the Secretary of State from the Mexican Secretary of Fisheries, the Agriculture Minister from Venezuela, and the Maritime Commissioner from Vanuatu in which they say they support and express concerns about the approach. So, I look forward to the administration helping us to sort that out.

[The information referred to follows:]

U.S. DEPARTMENT OF STATE OFFICE OF LANGUAGE SERVICES—TRANSLATING DIVISION

LETTERS FROM GUILLERMO JIMENEZ MORALES, SECRETARY OF FISHERIES, MEXICO

The Honorable JAMES A. BAKER III,
Secretary of State
United States of America

Mexico supports by tradition and conviction a fisheries policy which is absolutely respectful of ecosystems and the existing biodiversity in its waters. This has been demonstrated both in practice and in the positions that Mexico has maintained in international fora where Mexico has expressed its interest and concern over the situation both in the seas under its jurisdiction and in the rest of the oceans.

With respect to the specific reason for this communication, permit me to indicate that the Secretariat of Fisheries has for some time been implementing a special program for tuna management and dolphin protection, given our real commitment to reduce drastically the incidental capture of these marine mammals. The Mexican tuna fleet and the scientific community are participating actively in this program.

As you are aware, since last December the Mexican tuna fleet has had 100 per cent observer coverage on board on all its fishing trips and vessels and it uses the best available technology in the world for the protection of dolphins.

The Mexican observer program is designed to be composed of 50 percent observers provided by the IATTC, with the other 50 percent provided by the National Fisheries Institute.

This program has had very positive results. For 1991, incidental mortality reached an index of 2.94 dolphins per set. This statistic represents a significant continued improvement in the performance obtained in previous years by the Mexican fleet, and compares very favorably with the mortality rate obtained by the U.S. fleet when most of it fished in the eastern Pacific Ocean. The total number of incidental mortalities by Mexican vessels are below the limits currently established for the U.S. fleet.

The program instituted by the Government of Mexico and faithfully implemented by the Mexican fleet has led to a reduction in incidental mortality of more than 80 percent within a period of only 6 years.

Nevertheless, aware that it is necessary to redouble efforts to protect marine mammals even more, especially dolphins, the Government of Mexico, through the Secretariat of Fisheries, will analyze and implement the following additional steps within its program:

(a) Recognizing that the future of the fisheries of the world require responsible management, both for conservation and for efficient harvesting of fisheries resources, it is necessary to rely upon a scientific approach and multilateral institutions in order to achieve these objectives. For the above reason, it is the intention of the Government of Mexico to reenter the Inter-American Tropical Tuna Commission as an active member with full rights, once the appropriate authorizations have been obtained.

Within this context it is the intention of the Government of Mexico to work to conform this international arrangement to new realities and to broaden the scope of its research program to include other oceans of the world.

It is necessary for the international concern over the incidental capture of dolphins in tuna fisheries to be supported by the analysis, research, and recommendations of an independent organization with rigorous scientific character. This body should have complete and sufficient information regarding the Association of Marine Mammals with these fisheries, in order to achieve objective and equitable conclusions.

(b) Given the nature of the tuna fisheries in the eastern Pacific and in other oceans, it is in the interest of the Government of Mexico to have a precise and deeper knowledge of the association conditions of marine mammals, specifically dolphin, with tuna. It is the objective of the Government of Mexico to conduct an intensive program of research for the development of alternative tuna fishing techniques that avoid setting on dolphins and that obtain similar economic yields, as well as for the development of technology that will improve the existing practices in order to avoid incidental mortality of dolphins.

For this reason, as you are aware, the Government of Mexico has allocated a special budget of US\$1 million, which would be strengthened, both in its objectives and results, if others made similar contributions.

(c) Given the encouraging results obtained by the program of the Secretariat of Fisheries, from this year on the program will be intensified not only in its technological development but also through a stricter regulation that will lead to drastic reductions in incidental mortality. This program includes the objective of eliminating incidental dolphin mortality in tuna fisheries. Special emphasis will be placed on implementation of measures for the protection of the eastern spinner and coastal spotted dolphin.

(d) If the scientific research undertaken on this problem does not result in agreement between our governments on a way to eliminate dolphin mortality in the tuna fishery within 2 years of this letter, based upon objective scientific evaluation of this letter, it would be the intention of Mexico's Secretariat of Fisheries to implement a 5-year moratorium that will permit the use of techniques for setting on dolphins only for scientific purposes under IATTC auspices, in order to find the solution sought. This phase of the program will include annual evaluations.

The research program as well as the establishment of a moratorium period will require the close participation of IATTC.

The program described above implies a serious effort on the part of the Government of Mexico and a sacrifice on the part of the domestic tuna industry, making it necessary to look for alternative fishing grounds and general support for the Mexican fleet during the entire process.

In the search for responsible fishery, a principle which sustains our fisheries policy of which this program forms a part, we invite all fisheries authorities of the world involved in tuna fishing to join the effort which Mexico is implementing and promoting.

In anticipation of the attention which you will give to this communication, I reiterate assurances of my highest consideration and esteem.

GUILLERMO JIMENEZ MORALES,
Secretary of Fisheries.

[The Spanish version of the above letter may be found in the committee files.]

JULY 20, 1992.

The Honorable JAMES A. BAKER III,
Secretary of State
United States of America

I have the honor to refer to the letter sent to you the past February 20, in which several considerations are explained related to the policy of the Government of Mexico for reducing incidental dolphin mortality associated with tuna fishing by the Mexican fleet.

In said communication the commitment made by the Government of Mexico was explained, under premises previously agreed to between our two countries, to implement a 5-year moratorium starting in 1994 that would allow the development of alternative methods (based on scientific research and data) for commercial tuna fishing without the need to set nets on dolphins and therefore reduce (even further than that we have already accomplished) the incidence of mortality of such species.

The Government of Mexico assumed the commitment mentioned above fully convinced that these measures could be necessary to resolve the problem of incidental dolphin mortality; and in the understanding that the commitment would bring about the lifting, by the USA, of the embargo on Mexican exports of yellowfin tuna. Such commitment was based on the fact that noncompliance of the moratorium would trigger certain actions by the Government of the United States which expressly excluded the possibility of imposing restrictive commercial measures to fisheries other than tuna.

The Government of Mexico was informed of the amendments introduced to the proposed bill H.R. 5419 entitled "International Dolphin Conservation Act of 1992" currently in the process of being approved by the Congress of the United States, which would transform the scope and implications of the project, and besides, alter the circumstances under which the Secretariat of Fisheries had taken the decision to assume the commitment contained in the letter of last February. It was reiterated at that time that the agreement concerning the new bill, which introduced potential sanctions against fisheries besides tuna, would exclude any against shrimp.

In addition, recent progress within the Inter-American Tropical Tuna Commission (IATTC) has led both our governments to approve, jointly with other nations whose fleets fish for tuna in the eastern Pacific, an international dolphin protection program which represents a real and reachable commitment of all participants to diminish substantially dolphin mortality in the tuna fishery, establishing surveillance mechanisms for the fulfillment of the goals agreed.

This multilateral agreement offers the opportunity to resolve, in a responsible and sustainable manner, tuna fishing and incidental dolphin mortality. Its approval by the countries with the active participation of business, ecological groups and scientists, demonstrates that this is the way to a joint solution to the problem.

Given the aforementioned facts and in light of the new aspects of bill H.R. 5419, should they be approved, Mexico registers its disagreement with the abovementioned bill, because of the inclusion of the shrimp fishery which was never agreed to by our countries. We maintain our commitment to the multilateral proposal of the IATTC as being the best alternative and as having already been supported by our governments.

We reaffirm our determination to base our fishing policy upon sustainable use and on conservation of living marine resources and the responsible fishing criteria, contained in the Cancun Declaration, recently subscribed by our two governments in the International Conference on Responsible Fishing. In the past 6 years, the incidental dolphin mortality registered in the Mexican tuna fleet operations has diminished by more than 80 percent. These results demonstrate the effectiveness of the actions adopted by the government and the efforts made by the industry.

In conveying the above to you, I reiterate the assurance of my kind and distinguished consideration.

Sincerely,

GUILLERMO JIMENEZ MORALES,
Secretary of Fisheries.

[The Spanish version of the above letter may be found in the committee files.]

LETTERS FROM JONATHAN COLES-WARD, MINISTER, REPUBLIC OF VENEZUELA

MARCH 7, 1992.

The Honorable JAMES A. BAKER III,
Secretary of State,
United States of America

DEAR SECRETARY BAKER: The Government of Venezuela continues to seek a resolution to the ongoing dispute prompted by the U.S. embargoes on imports of tuna pursuant to the Marine Mammal Protection Act ("MMPA"). Throughout the past year, we have made a consistent effort to reach an agreement with the United States and all other interested nations that would lead to removal of the U.S. embargoes and an end to incidental dolphin mortality.

Venezuela firmly believes that the issue of dolphin mortality in connection with tuna fishing in international waters, including but not limited to the eastern tropical Pacific ("ETP"), must be dealt with on a multilateral basis. Multilateral action is necessary both to ensure compliance with existing international agreements (in particular, the General Agreement on Tariffs and Trade—GATT), and to ensure effective implementation by all tuna fishing nations of measures to conserve both dolphin and tuna.

Venezuela has already taken very significant steps with respect to reducing dolphin mortality in connection with tuna fishing. These steps have been taken in full cooperation with the international body responsible for tuna management and protection of the estimated 8 million dolphins in the ETP, the Inter-American Tropical Tuna Commission ("IATTC"). As a result of these measures, Venezuela has, during the past 3 years alone, reduced its incidental dolphin mortality in the ETP by approximately 75 percent. The horror days of unmitigated dolphin slaughter are clearly past, yet Venezuela continues its efforts to reduce incidental dolphin mortality.

Venezuela has achieved its reductions in dolphin mortality by following IATTC recommendations and by supplementing them with its own measures. Venezuela already is a participant in the IATTC's Intergovernmental Dolphin Rescue Program administered by the U.S. National Marine Fisheries Service ("NMFS") and will soon become an official member of the Commission. Consistent with Commission guidelines, Venezuela maintains 100 percent observer coverage of its tuna fishing fleet in the ETP. By regulation, Venezuela requires that all its tuna vessels use the "Medina panel" for the execution of the "backdown" procedure for dolphin rescue operations, and strictly prohibits the tuna fleet from using explosives or making any sundown or night sets. All licensed skippers must complete a comprehensive educational program on environmental protection, and both the captains and skippers of tuna fishing vessels must undergo special training on the execution of dolphin rescue operations. In addition, the Government conducts regular inspections of the gear and equipment related to dolphin rescue operations.

Venezuela firmly believes that reductions in dolphin mortality must be sought through methods that will not jeopardize the tuna population. For Venezuela, the word "conservation" means to protect and guarantee the preservation of all species. That includes both dolphins and tuna. As numerous studies have shown, adult yellowfin tuna tend to swim with dolphins and thus tuna fishing where no dolphins are present threatens to deplete the stock of tuna that have not reached reproductive age. More research is needed to find a way to take advantage of the tuna-dolphin bond while conserving both tuna and dolphin.

To that end, Venezuela is aggressively pursuing the establishment of a multilateral program for research and development of dolphin-safe tuna fishing techniques. Venezuela has set aside U.S. \$500,000 for a multilateral dolphin-safe research effort which it anticipates can be combined with the NMFS appropriations targeted for this purpose and with funds from other governments and organizations.

As part of Venezuela's continued commitment to dolphin conservation in the ETP, we will sustain our efforts to reduce the level of dolphin mortality for the 1992 fishing year to a level below that achieved in 1991, and will make further efforts to reduce that mortality in subsequent years. Of course, we will also continue to participate in the IATTC's dolphin protection program and to maintain 100 percent observer coverage on the Venezuelan tuna purse-seine fleet. We recognize and support the need to implement special measures to provide effective protection for eastern spinner and spotted dolphins.

If, by march 1, 1994, the research program of the IATTC and its member states has not found a fishing method or technology that both of our governments agree will eliminate the mortality of dolphins in connection with tuna purse-seine fishing,

we will support and, subject to the willingness of the United States and Mexico to join us, participate in a 5-year moratorium on the practice of harvesting tuna by setting on dolphins. During this period, a limited number of sets on dolphins should be allowed in order to continue the research necessary to find a way to eliminate dolphin mortality through truly dolphin-safe methods. Such research should be conducted exclusively under the direction of the IATTC and only when approved by the IATTC member states involved in this research program.

We strongly urge the United States to acknowledge the significance of the commitments we have set forth above. In recognition of these commitments and all of Venezuela's efforts to achieve reductions in incidental dolphin mortality, we call upon you and the honorable United States Congress to create the conditions for international cooperation to achieve global protection for dolphins by providing relief from the MMPA embargoes.

I take this opportunity to reiterate to you my highest esteem and consideration, I remain,

Sincerely yours,

JONATHAN COLES-WARD,
Minister.

JULY 22, 1992.

The Honorable JAMES A. BAKER III,
Secretary of State,
United States of America

DEAR SECRETARY BAKER: The Government of Venezuela is seriously concerned about recent statements of the U.S. Administration regarding Venezuela's position with respect to H.R. 5419, which contemplates a 5-year moratorium on tuna fishing with purse seine nets as part of dolphin conservation efforts in the eastern tropical Pacific (ETP). We believe it is important officially to clarify Venezuela's position on the issue.

As you know, Venezuela is committed to dealing with the issue of dolphin mortality in connection with tuna fishing on a multilateral basis. This was also the approach endorsed by President Bush last year in a letter to President Carlos Andres Perez. Accordingly, Venezuela has persistently sought a multilateral accord to achieve the goal of eliminating such mortalities in a scientifically sound manner. Venezuela strongly believes that a multilateral approach to the issue is not only appropriate, but indeed necessary to resolve the international legal problems caused by the U.S. embargo on tuna under the Marine Mammal Protection Act ("MMPA").

In March of this year, the U.S. Administration asked Venezuela to support an international moratorium on purse seine fishing for tuna associated with dolphins during a 5-year period for research to find ways to eliminate dolphin mortality in that fishery. Among other things, Venezuela was told that in the absence of a multilateral agreement on progressive reduction of dolphin mortality, acceptance of the moratorium would be the only means of obtaining legislative relief from the MMPA embargo. Venezuela was also told that the proposed moratorium has the support of key environmental groups. Although continuing to believe that a multilateral solution could be found, Venezuela agreed to try the proposed U.S. approach.

Since March, many things have changed. First, the March legislative proposal has died and been replaced by a new bill (H.R. 5419) which perpetuates the unilateralism of the current law and substantially raises the economic stakes. Perhaps some history will help explain:

At a March 1st hearing of the Fisheries Subcommittee of the House Merchant Marine and Fisheries Committee of the U.S. Congress, it became clear that environmental groups (presenting an animal-rights point of view rather than a true conservation position) in fact did not support the Administration's proposal. Further, testimony by the Director of the Inter-American Tropical Tuna Commission ("IATTC"), which is responsible for managing tuna fishing in the ETP, exposed the serious adverse implications of the proposed moratorium for the tuna population in the ETP and its sustainable management. The combined opposition of the environmentalists and the IATTC to the proposal effectively precluded further congressional action on the Administration's March legislative proposal.

Second, at the special meeting of the IATTC on the tuna-dolphin issue, in April of this year, a multilateral dolphin protection agreement was reached. Under the IATTC International Agreement, the IATTC member nations and the observer governments participating in the April meeting have committed to specific, annual reductions in dolphin mortalities in the ETP that will result in the virtual elimination of such mortalities by 1999. Specifically, the April agreement, as further elaborated

at the IATTC annual meeting, in June of this year, provides for the reduction of dolphin mortalities from 19,500 in 1993 to less than 5,000, or 0.08 (statistically zero) percent of the current dolphin population in the ETP, by 1999.

To ensure compliance with these IATTC standards, the IATTC agreement requires 100 percent observer coverage and establishes a quota system for individual vessels. Vessels that exceed their quotas will have reduced quotas in the future; and Venezuelan captains who do not abide by the terms of their permits will lose them. Quotas will be set on a multilateral basis based on sound science, and environmental groups have been accorded a role on the International Review Panel that will participate in setting and policing the standards. Sanctions, if necessary, will have a multilateral foundation and will not create international trade frictions.

The IATTC agreement does more than requiring annual dolphin mortality reductions. It provides for the establishment of a multilateral research program, to be administered by the IATTC, aimed at developing methods of catching mature tuna without causing dolphin mortalities. By pursuing this goal, the research program will implement the IATTC's mandate to ensure conservation of the tuna population in the ETP, while seeking appropriate means to eliminate incidental dolphin mortality. As you know, Venezuela has already pledged to support this research. Significantly, representatives of environmental organizations will sit on the Scientific Advisory Board that will organize and oversee the research.

The IATTC approach is consistent not only with the organization's own findings regarding the threat to the tuna population in the ETP posed by fishing only for young tuna, which, uniquely, do not associate with dolphins in the ETP, but also with the recommendations of the U.S. National Academy of Sciences ("NAS") on the issue. In its recent report entitled "Dolphins and the Tuna Industry," NAS recommends a research program of at least 5 years aimed at developing dolphin-safe methods of tuna fishing that will not endanger the tuna population by requiring fishermen to catch only tuna that have not reached reproductive age. Furthermore, during the IATTC's April meeting, its Director officially expressed his concern over the proposed 5-year moratorium which would cause a negative impact on tuna stocks in 2½ years. Based on the NAS and the IATTC assessment Venezuela is convinced that a moratorium on fishing in connection with dolphin in the ETP would be unwise and indeed, in light of the IATTC International Agreement, could not be supported by Venezuela, consistent with its obligations as a member-nation of the IATTC's convention.

Now is the time to demonstrate to the world that the choice between preservation of species and jobs is a false dichotomy. Through multilateral arrangements, making decisions based on advice from many sources, including environmentalists, and on sound science, countries can work together to establish sustainable resource management systems. Appropriate economic sanctions can be visited on those who fail to comply with agreed programs, and because the penalties are imposed under a multilateral agreement, unnecessary trade frictions can be avoided.

Venezuela urges the U.S. Administration to support legislation which will lift the current MMPA tuna embargoes for all countries that participate in and observe the terms of the recent IATTC International Agreement. Such legislation would be good for dolphins, for tuna, the U.S. economy, the Venezuelan economy, and the international trading system. It would also be good for environmentalists who could point with pride to the concrete reductions in incidental dolphin mortality due to their efforts and to the institutional role they have created for themselves. In fact, resolution of the tuna-dolphin controversy in this way would convert the controversy from the cause celebre of environmentalists, and others who oppose the GATT and free trade agreements, into a model for resolving trade and environment conflicts with multilateral agreements based on sound science.

I request that you take steps to ensure that Venezuela's position regarding the proposed moratorium on fishing in association with dolphins is clarified within the U.S. Administration, as well as within the U.S. Congress, in accordance with the statements set forth above.

Taking this opportunity to reiterate to you my highest esteem and consideration, I am sincerely yours,

JONATHAN COLES-WARD,
Minister.

[The Spanish version of the above letter may be found in the committee files.]

LETTER FROM MICHAEL E. HANSON, DEPUTY COMMISSIONER OF MARITIME AFFAIRS,
REPUBLIC OF VANUATU

JUNE 30, 1992.

The Honorable RANDY CUNNINGHAM,
U.S. House of Representatives
Washington, DC

DEAR SIR: I would like to clarify the position of the Government of the Republic of Vanuatu by paraphrasing the Commissioner of Maritime Affairs, Republic of Vanuatu, who made the following statement at the most recent meeting of IATTC:

"Thank you Mr. Chairman. Following the report in Tuesday's edition of the New York Times that Vanuatu has agreed with the United States to ban the setting of nets on dolphins and thus to support the so-called compromise bill, I have been instructed by my government, Mr. Chairman to make a public statement clarifying Vanuatu's position, and I would like to do that. * * * Vanuatu believes that the correct approach is a structured, planned, multilateral program that takes account of the current state of technology. Vanuatu fully supports the program being implemented through the auspices of the IATTC as the most rational approach to the problem. * * * Lest there should be any doubt, Vanuatu does not support the compromise bill, has not agreed with the U.S. or any other government to ban the setting of nets around schools of tuna that could include dolphins, and, if we were in a position to do so, would oppose such a bill."

I trust this clarifies the position of the Vanuatu Government. Should you have any questions, please don't hesitate to contact me.

Best regards,

MICHAEL E. HANSON,
Deputy Commissioner of Maritime Affairs, Republic of Vanuatu.

Senator KERRY. Ms. Wilson, if you could summarize, that obviously would be very helpful.

STATEMENT OF JENNIFER JOY WILSON, ASSISTANT SECRETARY FOR OCEANS AND ATMOSPHERE, DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION; ACCOMPANIED BY THOMAS A. CAMPBELL, GENERAL COUNSEL, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, AND DR. NANCY FOSTER, CHIEF, PROTECTED SPECIES OFFICE, NATIONAL MARINE FISHERIES SERVICE

Ms. WILSON. Thank you, Mr. Chairman, Senator Breaux. I am Joy Wilson, Assistant Secretary of Commerce and Deputy Administrator of NOAA. With me today is NOAA's General Counsel, Tom Campbell, and also the head of our Protected Species Office, Dr. Nancy Foster.

I applaud this committee's initiative in holding today's hearing, and we are happy to be here to testify on behalf of the administration on efforts to save more dolphins in the Eastern Tropical Pacific. Mr. Chairman, my Department supports the statement that will be provided by my colleague in the State Department, and I would like only to make very brief oral remarks.

Chairman Hollings, in his letter of invitation, asked for a description briefly of ongoing dolphin protection programs. And just briefly, I want to say that I am proud that the U.S. leadership in the United Nations helped secure the international ban on high seas driftnet fishing by December 31 of this year. As you know, such enormous driftnets are indiscriminate killers and among the beneficiaries from ceasing this practice will be marine mammals, including dolphins. The United States also leads the world in enforcing our opposition to high seas driftnets.

NOAA's efforts to protect dolphins under the MMPA includes stock assessments, monitoring dolphin strandings through a network of volunteers that NOAA organized in 1981, and investigating the reasons for dolphin die-offs. We have implemented the observer program for all category 1 fishing vessels where marine mammal and fishery interactions are most likely to take place, and our regulations to protect dolphins specifically in the Eastern Tropical Pacific includes skipper performance standards.

But efforts ongoing to protect dolphins go beyond those specifically in the MMPA. Indeed, much of NOAA is engaged in efforts that in one way or another work to improve the health of the entire marine environment, and this benefits dolphins as well as other living marine resources. Such actions include better international agreements to reduce dolphin mortality. The U.S. Government was prudent and responsible in negotiating a multilateral plan to reduce dolphin mortality through the Inter-American Tropical Tuna Commission. International commitments to progressively reduce dolphin deaths in the ETP have gone forward in parallel with our efforts to work with Congress for a more aggressive solution, and one that will achieve our objectives most quickly.

In particular, as a result of these efforts, the legislation we support provides for an international moratorium in less than 2 years on setting on dolphin to catch yellowfin tuna by countries fishing in the Eastern Tropical Pacific, and, in conjunction with that moratorium, a ban on imports into this country of any tuna caught by encircling dolphin, an aggressive codification of the U.S. tuna industry's initiative to encourage consumption of only dolphin-safe tuna in this country.

In sum, we applaud your statement, Mr. Chairman. We urge this committee to enact such legislation for the following reasons: This legislation is better for dolphins than existing law; it accomplishes the goal set in law by Congress in 1990 to stop all encirclement of dolphins; it is good for American workers presently at risk from embargoes affecting nations that could be supplying us today with dolphin-safe tuna; and it is good for American consumers who want dolphin-safe tuna.

One final point: NOAA was asked to comment on S. 1898, the Marine Mammal Health and Stranding Response Act. We support this legislation, as it facilitates NOAA's ongoing efforts to assess the health of marine mammals and helps assure the continued success of stranding networks as well as the tissue bank program. I have with me our official position statement which includes specific comments on that legislation, and I will be pleased to provide it for the record.

Thank you, and we look forward to any questions.

Senator KERRY. Thank you very much, Ms. Wilson. And, Mr. Ambassador, if you could also summarize we would appreciate it.

STATEMENT OF AMBASSADOR DAVID COLSON, DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES AFFAIRS, DEPARTMENT OF STATE

Ambassador COLSON. Thank you, Mr. Chairman. I will be happy to summarize.

The first point I would like to make is that there has been considerable progress internationally on reducing dolphin mortalities under the 1988 amendments to the Marine Mammal Protection Act. In the last 4 years, we have seen a 75-percent reduction in mortalities in the international fishery. It has gone from a kill-per-set ratio of about 10.9 down to about 3.1.

The foreign governments are doing a good job. They have comparable programs, and the probable reason that they are probably not meeting the embargo requirements of present law is because the situation in the U.S. fishery is quite unique with the U.S. vessels leaving the fishery.

In 1992, our foreign policy and trade policies in this area are dictated by the activities of two tuna boats, two U.S. tuna boats that fished in the Eastern Tropical Pacific in 1991. All of our international relations that relate to this issue, all of our trade relations that relate to this issue, have been determined by the activities of two tuna boats out on the Eastern Tropical Pacific in 1991. That is the way that law is set up. It does not give us an endgame strategy; and, we have all been looking for, I think, for some time, an endgame. How do we come to a final solution to this issue?

In 1990, Congress took this issue up when it looked at the Dolphin Protection Consumer Information Act. And Congress there, in response to voluntary actions by the canners, created a labeling law. And in that labeling law Congress charged the Secretary of State with the responsibility to go out and negotiate, and the words of that law are, "to reduce and as soon as possible eliminate the practice of harvesting tuna through the use of purse seine nets intentionally deployed on dolphins."

Now, that is what we have done in the proposal that the administration has brought to you. And as Under Secretary Zoellick testified before you in another hearing and another time, the administration is committed to dealing with this issue straight up and on the merits. We are not trying to deal with the trade problem through the back door. We are trying to bring to you a good proposal that is good for dolphins but that also deals with the foreign policy and trade problems that have been associated with this issue over time.

Now, the approach that we have brought forward is clearly a difficult one for industry. It is tough for them to accept that the very high level of performance that U.S. industry has had over the last few years on this issue should be penalized, if you will, by having the fishery terminated. But the fact of the matter is that this is probably the fairest way of dealing with the problem. It does not give the NGO's all they want. If the NGO's had their way, we would ban encirclement right now and forever. And what we have put together is a proposal which will allow the fishery to continue for awhile. It will go into a 5-year moratorium, and we can study the issue intently, and we can come back and revisit this issue at any time along the way if it appears that some of the allegations that have been made in various of these reports need to be reconsidered in connection with encirclement—or nonencirclement.

The proposal that we brought to you creates a level playing field for U.S. industry, it treats the U.S. industry the same as the foreign fleets involved; it provides time and opportunity to find a new

method of harvesting tuna in the Eastern Tropical Pacific. And we need the incentive that the moratorium gives for the tuna industry to go out and find that new method of fishing.

I would like to note that one thing that has happened in the last few days that has not been mentioned is that the European Community has indeed acted on this question. It has not acted in connection with trade issues, but it has passed a rule on July 15 that bans encirclement for European Community vessels.

Senator KERRY. With what kind of enforcement?

Ambassador COLSON. We have not clarified that. I doubt that their enforcement is very strong. They do not have the kinds of observer programs that we have, and, of course, they do not fish in the Eastern Tropical Pacific Ocean. But on the other hand, we find that there are a lot of allegations that the European fishery does encircle dolphins in the Atlantic, and that is one of the things that we would want to pursue.

Now, where are the other countries?

Senator KERRY. Mind if I interrupt you there just for a minute?

Ambassador COLSON. Yes, sir?

Senator KERRY. Let me play devil's advocate just a little bit, sort of get to the core issues here. What do you say to the U.S. fisherpeople who say you know, all of this sounds good, but I am going to be out of business. I cannot support the boats that I have got mortgaged and I am not going to be able to be out there fishing, and frankly, you know, it is not going to be enforced. And what happens when they say—you know, Koreans are going to come in. I mean, you may be fine, you have got an agreement with Venezuela or with Mexico, but what is to stop some other country from coming out there and continuing to do this? What is your answer?

Ambassador COLSON. Senator, my answer is that we have demonstrated that we can perform on these marine environment issues. We testified before you less than a year ago about driftnets. And we said we would get that job done and we got that job done.

Now, it is undoubtedly true that if we get the countries that are presently participating in this fishery out of the business of setting on dolphins, we are going to find somebody that is going to try to slip in through the cracks. There is going to be a flag-of-convenience boat out there, there are going to be some people that are going to try to participate in the fishery, and we are going to have to go after them, and we will get that job done.

I do not think there is any other way to answer that question except that we will have to be vigilant and ensure that the moratorium works for all countries. Right now, we are dealing with countries that are in the fishery. We are not trying to go around the world and get everybody to sign up to a nonencirclement policy. We have got to get Mexico and Venezuela on board, and that is what we have done.

And in connection with these letters that have been mentioned, they have thrown some confusion into this. I want to be very clear with you about where we stand with those two governments, and this is as of last night. It is based upon conversations that our ambassador in Caracas had with President Perez, and it is based upon conversations that Ambassador Negroponte had with the fisheries minister in Mexico. And that is quite simply that both of these

countries would undoubtedly prefer an approach that is based upon the bill that Senator Breaux has introduced. They would prefer to follow an IATTC-type of approach, just as our industry would prefer to follow an IATTC-type of approach. However, both of these governments stand behind the commitments that they made to us in their March letters to us in support of a 5-year moratorium, and they will enact that moratorium if we enact legislation that does not create the kinds of enhanced trade sanctions that have come out in the H.R. 5419 as it now stands on the House side.

Senator KERRY. Well, may I respectfully suggest to you that for us to have a prayer of passing anything here, we would have to see that in a third letter that clarifies these other two letters that I have here. Because as you say, the record as it currently stands is really confusing, and I do not think an oral recitation from our Government alone is going to satisfy the needs of people here to be assured about what the international cooperative capacity will be.

Ambassador COLSON. I understand what you are saying, Senator, and we will get right on that, but I do want the record to show that we did go to work last night and we clarified this situation and I believe that these governments do stand behind the commitments that were contained in the letters that they gave us in March at the most senior levels of those governments.

These enhanced sanctions do create a lot of difficulty for these governments. We are really asking for political decisions out of those governments, just like this is basically a political decision in this Government as to how we handle this. And when you burden that political decision by raising the economic stakes too high, by involving other industries other than the tuna industry in the decisionmaking process, it just makes it very difficult for those governments to go along with what they had previously committed to.

In particular, I do need to say, particularly on the Mexican and Venezuelan front, these enhanced sanctions really do undercut our efforts to accomplish some other environmental missions that we have with them.

Finally, very briefly, Mr. Chairman, I would like to just note a point or two about IATTC. We pursued this along two tracks, because when we brought forward the moratorium proposal in early March and there were hearings on the House side, that proposal was not supported by anyone, by industry or by the environmental community. So, we were looking at a situation where it did not appear to us that there would be legislation enacted by Congress to deal with this issue at this session. And we wanted to demonstrate both our commitment to try to do the right thing for dolphins and to demonstrate the willingness of these foreign governments to cooperate with us on this issue. I know there has been a long history, and we have had a lot of trouble getting foreign government cooperation, but they are doing a good job now, and they wanted to demonstrate their high level of performance.

At IATTC, we made one point very clearly to two groups. We made the point very clearly to our own industry and our own NGO groups that we were not pursuing an IATTC approach to create a panacea for the trade problems because the administration did not think that was going to work. We also made that very clear to the foreign governments. And we told them very clearly and

straightforwardly that they entered into the IATTC approach with us because it was the right thing to do, not because there was going to be some quid pro quo at some point that related to the lifting of trade sanctions. And so they have entered into that very clearly knowing exactly what the picture was and going down a road of cooperation with us in that area.

We are still going to need IATTC if we enact the moratorium proposal. We will need it for the reduction up until March 1 of mortalities, we are going to need it to run an observer program in the Eastern Tropical Pacific, we are going to need it to run the research programs that we are going to enact, and we are going to need it to monitor the conservation problems in the tuna fishery to see if there is a conservation problem and to give us guidance on whether or not we need to reexamine this question about a moratorium.

I will conclude my remarks there, Mr. Chairman. I would be happy to answer any questions you may have.

[The prepared statement of Ambassador Colson follows:]

PREPARED STATEMENT OF AMBASSADOR COLSON

Mr. Chairman, the Administration appreciates the opportunity to appear before this Committee to address the tuna/dolphin issue.

This controversy has been with us for some time. It was at the heart of the concerns which led to the Marine Mammal Protection Act of 1972 (MMPA); it has been a matter of domestic and international debate since; and it is a matter that needs to be resolved.

When this matter was before the Congress in 1988 there were at least two complaints on the international side of this question: that foreign fleets had to be brought to a level of performance comparable to the U.S. fleet; and, that the Executive Branch was not doing enough internationally to resolve this matter.

Mr. Chairman, today I can report a dramatic change in attitude by foreign governments on this question. Foreign government commitments to dolphin conservation and protection are strong; foreign fleet performance is high; all concerned governments are cooperating with the Inter-American Tropical Tuna Commission (IATTC); and, as for our efforts, the Congress has before it legislation which arises out of the Administration's proposal that provides for a five year moratorium on the practice of setting on dolphins and establishes a dolphin-safe market in the United States.

The Administration supports enactment of legislation that includes an international moratorium on the practice of setting on dolphins to catch tuna starting March 1, 1994, and establishes a completely "dolphin-safe" U.S. tuna market three months later. Such legislation achieves most quickly the long-standing goals of the Marine Mammal Protection Act. These important initiatives are embodied in a bill, H.R. 5419, currently in the House. Such legislation would restore access to foreign tuna supplies for U.S.-based canners.

Another important contribution to dolphin conservation and protection is the work of the Inter-American Tropical Tuna Commission. These two efforts both chart a course that reduces dolphin mortality and are preferable to the status quo.

Both of these tuna/dolphin solutions arise out of negotiations which we have conducted. They have the support of the concerned governments.

The Administration cannot support, however, any dolphin conservation bill that would install enhanced trade sanctions in U.S. law that are so onerous as to create disincentives for international cooperation on this matter.

Some background from the Administration's perspective is in order.

The 1988 amendments to the MMPA set in place a rigid comparability test between the kills-per-set by the U.S. fleet and the kills-per-set by foreign fleets. Other rules apply as well. If the comparability test is not met, or the other rules not observed, then non-discretionary trade embargoes are imposed—these embargoes relate to yellowfin tuna caught in the eastern tropical Pacific Ocean.

The philosophy of the 1988 amendments was to require high performance from the U.S. fleet in protecting dolphins, and to use the market place to induce similar high standards of performance by foreign fleets. At the time, it was known that the incidental mortality of dolphins caused by foreign fleets was much higher than that

by the U.S. fleet—both in terms of kills-per-set and total mortality. The 1988 amendments dealt with this problem by banning tuna from any country that did not implement several specific measures to reduce dolphin mortality and achieve a kill-per-set rate that was no more than 2.0 times the U.S. rate in 1989 and no more than 1.25 times the U.S. kill-per-set rate in 1990 and thereafter.

The 1988 MMPA amendments and NOAA's implementing regulations have specific requirements which must be met by any country wishing to export yellowfin tuna from the ETP to the United States. These requirements include: participation in the observer program of the inter-American Tropical Tuna Commission; that vessels execute a proper backdown procedure to release dolphins; that each foreign vessel be equipped with a dolphin safety panel (Medina panel) to prevent the entanglement of dolphins during the backdown; that sundown sets and the use of explosives to drive dolphins be prohibited; that vessels have on board at least three speed boats equipped with bridles, towing lines and snap hooks to prevent the collapse of the net; that vessels be equipped with a platform and underwater observation gear to be used for the observation and rescue of dolphin; and, finally, that vessels be equipped with long-range floodlights to be used in case the backdown channel has to be illuminated to direct the release of dolphins.

The governments of the fishing countries began aggressive efforts to meet these new requirements. Each of the fishing countries adopted and implemented regulatory programs comparable to the U.S. program to reduce dolphin mortalities to the lowest possible levels. In reviewing the programs of the foreign countries, the Secretary of Commerce has generally found that the fishing countries are in compliance with the necessary program elements of the NOAA regulations. While there have been a few minor problems, no one that I am aware of has challenged the basic point that the foreign fishing countries have adopted dolphin protection programs similar to that of the United States.

In addition to measures listed above, the fishing nations regularly send their captains and other personnel to workshops sponsored by the IATTC to improve their understanding of, and skill in, the measures necessary to reduce the incidental mortality of dolphins in the fishery to the lowest possible level. Since this program began more than 350 participants have attended these workshops including over 200 captains—virtually every captain in the ETP tuna fishery has attended a workshop at least once.

What has been the result of these efforts on the part of the foreign fleets? To answer that question, we can compare the situation in the fishery in 1988, with the situation today (Table 1).

Table 1.—Total Mortality and Kill-Per-Set for United States and Foreign Fleets, 1988–91

	Mortality		Kill-per-set		No. of vessels	
	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign
1988	19.7K	58.2K	5.3	10.9	37	95
1989	12.6K	84.3K	3.6	10.9	29	93
1990	5.0K	47.4K	2.8	6.4	29	94
1991	0.8K	27.0K	2.5	3.1	2	91

¹ All figures, including 1991, are for the calendar year. However, 1991 was the first year that the comparison between U.S. and foreign KPS was based not a calendar year but a fishing year running from October 1, 1990, to September 30, 1991. This shift in fishing year resulted in a drop in the U.S. KPS from 2.54 to 1.89 for purposes of determining whether the foreign KPS was within 1.25 times the U.S. KPS.

In 1988, the U.S. fleet had an average mortality rate of 5.3 kills-per-set (KPS). This was the standard against which the performance of the foreign fleets was to be measured. The mortality rate in the foreign fleet in 1988 was 10.9 KPS, more than twice that of the U.S. fleet. It was recognized at the time that, because the U.S. kill rate was declining steadily, foreign fleets would likely not meet the 1990 standard and that in 1991 embargoes would be imposed.

Mr. Chairman, the reduction in dolphin mortality by the foreign fleets has been achieved quickly. By 1991, the mortality rate for the foreign fleet as a whole had dropped to 3.1 KPS, more than 40 percent below the U.S. kill-per-set rate at the time the 1988 amendments were adopted. I should point out that Mexico consistently outperformed the foreign fleet as a whole—between 1988 and 1991 the kill rate of the Mexican fleet dropped from 8.2 to 2.9 KPS (Table 2).

Table 2.—Total Mortality and Kill-Per-Set in the Mexican Fleet 1988-91

	Mortality	KPS	No. of vessels
1988	49.3K	8.2	49
1989	51.2K	8.5	48
1990	26.0K	4.8	48
1991	16.0K	2.9	43

Total mortality in the ETP tuna fishery has also dropped dramatically, from bust under 100,000 in 1989 to approximately 27,000 in 1991 and this year it should drop below 20,000 dolphins. Thus, the 1988 MMPA amendments have been an unquestioned success—achieving a 75 percent reduction in total mortalities in just three years, and achieving a level of mortalities for the whole fleet which is in combination comparable to the level allowed to the U.S. fleet by the marine mammal permit which it holds.

During the same period, the majority of the U.S. fleet moved out of the eastern Pacific. Those that stayed continued to further reduce their kill-per-set rate and therefore, despite the significant progress by the foreign fleets, Mexico and Venezuela are embargoed under the 1988 MMPA amendments because their kill-per-set rates are greater than 1.25 times the kill-per-set rate of the remaining U.S. fleet in the ETP, which for the 1991 fishing year was 1.89 KPS. Further, although there were no observed dolphin kills by the Colombian fleet during the 1991 fishing year, Colombia is also embargoed because its fleet did not achieve the required level of observer coverage during that period. I would also note that in 1991, Vanuatu had a KPS rate of 1.75, less than that of the U.S. fleet, and thus the embargo against Vanuatu, imposed in March 1990, was lifted in January of this year.

In spite of the embargoes, Mexico, Venezuela, and the other fishing nations are committed to the conservation and protection of dolphins and to working with us on this difficult issue.

Subsequent to the 1988 MMPA amendments, Congress spoke to this issue in the 1990 Dolphin Protection Consumer Information Act (P.L. 100-627, Sec. 901(h). Congress called for:

negotiations and discussions with appropriate foreign governments, to reduce and, as soon as possible, eliminate the practice of harvesting tuna through the use of purse seine net intentionally deployed to encircle dolphins.

Pursuant to the 1988 MMPA amendments a tuna embargo was imposed against Mexico by Court Order on February 22, 1991. Subsequent embargoes followed on other fishing nations (Venezuela, Vanuatu, and most recently Colombia) as well as 20 nations identified as "intermediary nations". Some of these embargoes have since been lifted but today 13 countries remain subject to U.S. embargoes on yellowfin tuna as harvesting or intermediary nations (Table 3).

Table 3.—Countries Subject to U.S. Embargoes on Yellowfin Tuna

	Date of embargo	Date lifted
Fishing countries:		
Mexico	2/22/91	
Venezuela	3/26/91	
Vanuatu	3/26/91	1/22/92
Colombia	4/27/92	
Intermediary countries:		
Canada	1/31/92	
Colombia	1/31/92	
Costa Rica	5/24/91	
Ecuador	1/31/92	2/28/92
France	5/24/91	
Indonesia	1/31/92	8/09/92
Italy	5/24/91	
Japan	5/24/91	
Korea (ROK)	1/31/92	5/07/92
Malaysia	1/31/92	
Marshall Islands	1/31/92	2/26/92
Netherlands Antilles	1/31/92	
Panama	5/24/91	4/24/92
Singapore	1/31/92	

Table 3.—Countries Subject to U.S. Embargoes on Yellowfin Tuna—Continued

	Date of embargo	Date lifted
Spain	1/31/92	
Taiwan	1/31/92	2/28/92.
Thailand	1/31/92	3/10/92.
Trinidad and Tobago	1/31/92	4/24/92.
United Kingdom	1/31/92	
Venezuela	1/31/92	4/24/92.

Shortly, Mexico brought a GATT case which called into question our rights to impose such an embargo under GATT rules. A GATT panel found the embargo to be inconsistent with U.S. obligations under the GATT. We have agreed with Mexico not to request adoption of the panel report by the full GATT Council while we work to resolve the situation through other means. However, last week, on July 14, the EC requested and was granted a separate GATT panel to consider the intermediary embargoes currently in effect against Spain, France, Italy and the United Kingdom. The panel will be established and there is little reason to believe that the results of a second panel review will differ significantly from the first. The EC did, however, indicate that it may be willing to review its request for a panel should legislation be passed that would lift the embargoes.

The combination of these factors led the Administration to look for a solution to this long standing controversial matter. One which would reduce dolphin mortalities even faster and remove the trade sanctions. And, in consultations with Members of Congress and staff, it was confirmed that the only way that would occur was if the Administration could propose a solution that was better for dolphins than the current provisions of the MMPA.

In the period between mid-1991 and February 1992 we conducted intensive discussions with environmental groups, industry, and the countries concerned. We had several ideas which were presented to staff; in both instances we were advised that they were not sufficiently attractive to command support in Congress. We continued our consultations. It was understood by the foreign governments that a comprehensive solution was needed and they shared this goal.

In late February we reached agreement with Mexico and Venezuela on a proposal which would move toward the elimination of sets on dolphins and would, at the same time, lift the embargoes. While perhaps not perfect, the Administration believed it had, and has, the ingredients which should prove attractive: in essence the understanding provided for two more years of fishing during which time embargoes would not be imposed followed by a five-year moratorium on sets on dolphins. This arrangement would allow for intensive research during the two-year transition and moratorium periods, a five-year moratorium to see if alternatives could be found, and an opportunity to revisit the issue at the end of the moratorium period. The moratorium would not be imposed if in two years a way could be found to avoid dolphin mortalities during tuna fishing operations.

On March 3 the Administration transmitted this proposal to both Houses of Congress, together with letters from foreign officials in support of the proposal.

The essence of the proposal is to establish the policy of the United States to promote a five year moratorium on sets on dolphins beginning on March 1, 1994. The next two years would be dedicated to an intensive research campaign to find an alternative fishing method for catching large yellowfin tuna that does not involve sets on dolphins or, alternatively, a way to set on dolphins in a truly dolphin-safe manner.

The proposal would lift an embargo that might otherwise be applied under the provisions of the MMPA for any country that formally communicates to the United States its commitment: a) to participate in the dolphin observer and research programs of the IATTC; b) to continue to reduce dolphin mortalities in absolute numbers in 1992 below 1991 levels and to continue reducing mortalities until March 1, 1994; c) to implement a special program of protection for eastern spinner and spotted dolphins; and d) to implement a moratorium for a five year period beginning March 1, 1994 on all encirclement of dolphins except for scientific purposes.

On March 18, the House Subcommittee on Fisheries and wildlife held a hearing. Industry opposed the proposal as did the environmental groups. While continuing to believe we had a good proposal, our conclusion was that without either industry or environmental group support our proposal would not succeed and further discussion with industry, environmental groups, and congressional staff was needed.

On a separate track, the Administration continued to work in the Inter-American Tropical Tuna Commission toward a multilateral approach to dolphin conservation.

In that setting we did not believe we could achieve a prohibition on sets on dolphins, but we did believe there was a significant opportunity to work within IATTC to further reduce dolphin mortality beyond the status quo, regardless of how our moratorium proposal might fare.

On April 21-23 in La Jolla, California, the IATTC met to continue discussions on a multilateral approach to the tuna/dolphin issue. This was the third such meeting—following previous meetings in San Jose, Costa Rica in September 1990 and at La Jolla in January 1991—neither of which had advanced much beyond the conceptual stage. At these two previous meetings, the general objectives of a multilateral dolphin protection program were agreed, and commitments were made by the participating governments to 100 percent observer coverage and to a research program designed to study means to reduce and eliminate dolphin mortality. These agreed objectives and commitments represented a positive move forward, but the governments did not, to that point, take the next step to elaborate a specific, enforceable regime to reduce mortalities.

At that April 1 meeting, countries agreed to support a very tough program which would reduce mortalities on an annual basis from the current level to less than 5,000 during 1999 (Table 4).

Table 4.—IATTC Program Dolphin Mortality Limits.—1993, 19,500; 1994, 15,500; 1995, 12,000; 1996, 9,000; 1997, 7,500; 1998, 6,500; and 1999 less than 5,000.

Progress continued at a fourth meeting in La Jolla on June 16-18 where a vessel quota system was agreed to by all countries in the fishery, which is the means through which the reduction in dolphin mortalities will be achieved under the IATTC approach. Thus, for the first time a good multilateral program involving all countries in the fishery, working through the IATTC, had been achieved.

Let me briefly summarize this agreement. The objectives of the multilateral program are (1) progressively reducing dolphin mortality in the eastern Pacific Ocean to levels approaching zero through the setting of annual limits and (2) to undertake a major research effort to find ways of catching large yellowfin tuna without setting on dolphins with a goal of eliminating dolphin mortality in this fishery. The dolphin mortality reduction schedule establishes annual limits leading to less than 5,000 mortalities during 1999. The governments agreed to a mechanism to ensure compliance with the annual limits on dolphin mortality through a vessel quota system, and reconfirmed the commitment to 100 percent observer coverage. Finally, the governments agreed to embark upon an ambitious research effort to find ways to reduce and eventually eliminate dolphin mortality in the fishery.

This program will be undertaken through a cooperative effort coordinated by the IATTC and funded by contributions from the fishing countries and U.S. and foreign industry. The U.S. is contributing in FY93 more than \$1.2 million towards tuna/dolphin research including a direct cash contribution of \$584,000 to the IATTC, \$250,000 from our State Department budget and the remainder from NMFS. Venezuela has committed \$500,000 to the IATTC program and Mexico has allocated \$1 million for tuna/dolphin research. The IATTC has also received significant contributions from Bumble Bee Seafoods and the Italian Tuna Cannery Association.

This effort by all nations with vessels fishing in the region, including those like Mexico not formally a member of IATTC, is noteworthy. We believe it was the prudent and the right thing to do for dolphin conservation and protection within the IATTC, a multilateral forum, even though all parties knew their actions would not lift the embargoes. The moratorium approach, on the other hand, moves toward the elimination of setting on dolphins, consistent with Congressional intent, and it would remove the trade embargoes.

During this period, the Administration continued its discussions with the interested parties on moratorium-based legislation. At a meeting of Administration, industry, environmental groups, Congressional staff, including staff from this Committee on June 1, 1992, it appeared that strong support was developing for legislation containing a five year moratorium with the addition of establishing a dolphin-safe market in the United States. Unfortunately, this support does not include U.S. tuna boat owners.

As the bill moved through the legislative process on the House side one problem emerged. When the original moratorium proposal was negotiated, it was negotiated on the assumption that if a country didn't meet its commitments, the Marine Mammal Protection Act would nonetheless apply—which would result in the immediate reimposition of a yellowfin tuna trade embargo from fish caught in the ETP. That was itself about a \$10 million issue for Mexico and a \$15 million issue for Venezuela. Early staff drafts indicated that as a matter of principle something other than a reinstatement of the status quo would be required so, instead of yellowfin tuna from the ETP, those early drafts proposed that the sanction become an embar-

go on all tuna, changing the economic stakes for Mexico to about \$13 million a year and for Venezuela to about \$18 million a year.

For certain groups, even these enhanced sanctions above current MMPA requirements were not enough. They wanted an embargo on all fisheries products. That is a very heavy club. It was and is an unreasonable demand. It involves other industries and other import, export, and consumer interests unrelated to the tuna/dolphin issue. An all fish embargo for Mexico means about \$360 million at risk; and \$50 million at risk for Venezuela. Frankly, there is no principle at work here: it's overkill, pure and simple, which implicate numerous U.S. interests that are far removed from the tuna/dolphin debate.

Of particular concern to us was the inclusion of shrimp in an all fish embargo. As you know, under section 609 of P.L. 101-162, a shrimp embargo is required if other governments in the Caribbean fail to institute a turtle protection program in their shrimp fishery as we have in ours. To threaten Latin American shrimp industries for something that might happen in the tuna/dolphin arena undercuts our own leverage. The U.S. government and foreign governments are putting a lot of energy into ensuring that full turtle excluder device programs are in place in the Caribbean by May 1994. It makes it more difficult for these governments to work with their own shrimp industries since the shrimpers complain they are a pawn in someone else's game. To them it says that no matter what those governments and industries do to protect endangered sea turtles by using turtle excluder devices as we require, they could still be subject to a shrimp embargo because of the even more emotional tuna/dolphin issue. Thus the incentive to work with us is reduced and the hurdles to overcome in implementing the requirement that foreign countries have comparable TEDs programs are increased.

At the Subcommittee markup on the House side, the Administration made clear that it opposed an amendment that would include shrimp as part of a trade sanction relating to the tuna/dolphin issue. We made clear that our understandings with the governments concerned did not go that far. Nonetheless, at the full Committee markup this amendment was adopted; thus, H.R. 5419 as it stands would provide that all fish, including shrimp, be embargoed if a tuna/dolphin commitment is broken. The enhanced trade sanctions are unnecessary and counterproductive and raise the stakes too high.

Thus, where are we?

Internationally, we have negotiated two good deals for dolphins. In either case the dolphins will be better off than at the start of the year. Either path reflects a clear understanding of the role environmental issues play in our international relations, the foreign countries' willingness to cooperate with us on matters of environmental concern and interest, and their willingness to take strong measures together with us for dolphin protection.

What is wrong, however, is that we appear intent upon tying a tuna/dolphin solution to mandatory punitive trade sanctions that relate to industries and products that have nothing to do with the tuna/dolphin controversy. As such, they are so onerous as to create disincentives for international cooperation on the tuna/dolphin issue. Further, they are bad environmental policy, since they undermine the very efforts of other laws and negotiations designed to save endangered species of sea turtles. Simply put, the enhanced sanctions go too far; undermine our ability to accomplish another environmental mission; and raise the stakes for the other governments concerned to a point that isn't worth it.

That is where we stand. We have made more progress internationally on the tuna/dolphin issue in the last year than in the previous twenty. Our moratorium proposal is consistent with the direction that Congress has been headed, it is the best solution to this long standing controversy, and the Administration supports it. But, that stands to be without meaning if the Congress does not lock in the progress that has been made by passing legislation this year that will resolve this controversy once and for all.

We stand today within reach of legislation that meets the goals of the 1990 Congressional mandate in the Dolphin Protection Consumer Information Act "to reduce and, as soon as possible, eliminate the practice of harvesting tuna through the use of purse seine nets intentionally deployed to encircle dolphins."

We are prepared to work with this Committee to make that happen.

I would be happy to answer any questions.

Senator KERRY. Thank you very much.

Just a quick question, Ms. Wilson, before we go further. What has happened on the research? Why is it that—I mean, is not there a breach of faith with the process here over the last 10 years that

we do not have greater capacity to suggest alternatives and that the research has not been done?

Ms. WILSON. On a preliminary basis, Mr. Chairman, I would suggest that the improvements, in particularly backdown procedures, the Medina panel, and so forth, have accomplished a great deal of reduction in dolphin mortality. And as you mention in your opening statement, we should be proud of the conservation that we have been able to accomplish.

Senator KERRY. But that is all research into existing method. I am talking about alternative methods.

Ms. WILSON. Well, we do agree very strongly that the research contemplated in the legislation that I understand you have introduced and that is supported by the administration would focus on nonencirclement research, the alternative approaches to catching those large yellowfin tuna. That is exactly what we do need to focus on, and we have committed that no U.S. dollars would go to the research for encirclement improvements.

I might ask, I do have Dr. Nancy Foster with me from the National Marine Fishery Service, sir. I might ask if she is got any additional comment on that or would you like it for the record?

Senator KERRY. Well, if she does or if both of you could comment on the fact that there was a zero funding of the alternative methods research for this year. Does not that make a statement about the seriousness of this effort?

Ms. WILSON. I am sorry. I knew that we had money presently committed, I think close to a million dollars, for that alternatives research in fiscal 1992, but I was not familiar with the statement you just made.

Senator KERRY. Well, last year we had \$750,000 that was appropriated.

Ms. WILSON. In fiscal 1992?

Senator KERRY. Correct.

Ms. WILSON. I am sorry, that was—I was familiar with that. I was not familiar—

Senator KERRY. \$750,000, but we have not seen the results—there was supposed to be a plan developed within 6 months of that bill's passage, and we have not even seen that yet.

Ms. WILSON. Well, I am confident that should legislation pass as we have suggested, that money will be in the appropriate budget to adhere to our commitment to the research, sir.

Senator KERRY. But see, this is what we have heard for all these 11 years. I mean, everybody—every year, well, we are going to do the research. We are going to do the research. I mean, this is why we are here.

Ms. WILSON. Well, we are recommending it, too. We are recommending it, too, Senator.

Senator KERRY. Why does not it get done?

Ms. WILSON. I think really we are talking simply about a timing issue where our budget was introduced before we had come to Congress with a recommendation on this legislation, Senator, and before we had the commitments of the foreign governments.

Senator KERRY. Senator Breau.

Senator BREAU. Mr. Chairman, thank you. I want to introduce three statements in the record from the countries of Vanuatu, Re-

public of Vanuatu and one from the government, of the country of Mexico and the final one from the government of Venezuela.

Senator KERRY. Those are already in.

Senator BREAU. With regard to the Government of Venezuela, Ambassador Colson talked about how last night in conversations, that they said Venezuela in fact supported the moratorium, I do not know who beat up on who last night, but I want the record to be very clear, the Government of Venezuela's letter very clearly points out, and I will mention it, that in March of this year the administration asked Venezuela to support a moratorium, and Venezuela, according to the letter was told at that time that the absence of any kind of multilateral agreement on progressive reduction of dolphin mortality, that the acceptance of the moratorium would be the only means of obtaining legislative relief from the embargo.

That is what our country told Venezuela, to get them to agree in March to what Ambassador Colson is saying is their position today. The letter from Venezuela continues to say that since March many things have happened, things have changed. First, the March legislative proposal has died and been replaced by a new bill, the Studds bill which perpetuates the unilateralism of the current law.

And second, and the most important thing that has happened since March is that at a special meeting of the IATTC on the tuna/dolphin issue, a multilateral dolphin protection agreement was reached. Therefore, they do not support unilateral action by the United States which I would daresay is the same position of the Republic of Vanuatu in their letter, and certainly by the country of Mexico.

And Mr. Ambassador, you and I go back a long way on fisheries issues, and I have a great deal of respect for your work at the State Department and negotiating some very difficult issues with a great deal of success, but quite frankly, I would be embarrassed to have to present to this committee your statement today.

I think you are turning your back on 20 years almost of negotiations and good faith by countries around the world to try to reach an agreement on this tuna/dolphin issue. We now have 13 nations that because of your good work have reached a tuna/dolphin reduction agreement in June, and now in July you are saying that we do not care what was said or what was done on that agreement, and the concessions that were made and all of the negotiations that were made to reach that agreement, that we got finally 13 nations, the nations that do the Eastern Tropical Pacific to agree to, and now you come before the Congress and say, it does not matter.

We are out there, because for some reason, politics maybe, we are changing our position and we are going unilateral and putting a moratorium on products from all of these countries that we just negotiated a treaty with.

We already have the EC countries filing a complaint against unilateral embargoes. We have Mexico filing a GATT complaint on unilateral embargoes of tuna to this country. We have an international agreement on tuna that you, by this testimony and this administration, is clearly turning your back on.

You cannot have the agreement and this legislation. They are absolutely totally inconsistent. This is an immediate 1994 embargo

and the agreement that we have agreed to internationally that can work is not that, clearly. It is different and I think it is the way to go.

Now our National Academy of Sciences, the National Research Council, the head, Mr. Chairman, of the Inter-American Tropical Tuna Commission, all clearly say, and this administration and previous administrations say that the only way to manage a highly migratory species is through international agreements that cover the range of the species. We cannot do it by ourselves, and yet this legislation represents just that.

Dr. James Joseph, who is head of IATTC says in June 1992, 13 nations, including all the vessels fishing for tuna in association with dolphins in the eastern Pacific have reached an agreement to progressively reduce the mortality of dolphins to levels approaching zero.

To ensure compliance, an international review panel was established to help achieve the goals of the agreement, the Government for the first time approved a 2-year research program with about \$4 million in it to fund it. He says, in addition, the IATTC program seeks to progressively reduce the mortality of dolphins to levels approaching zero while conducting the research.

The IATTC program has already been accepted by 13 nations. Conversely, the moratorium that Ambassador Colson is proposing this morning reflects the goals of only one nation and there is no assurance that other nations will subscribe to it.

Now you know why I would be embarrassed after being involved in this for 20 or 15 years, to get an agreement, and now you have an agreement and now you have turned your back on it. Explain it.

Ambassador COLSON. I guess I would explain it, Senator Breaux, by looking at that 20 years of history. For 20 years we have been looking at a situation where we have in the United States had a goal of reducing mortalities in this fishery, and we have tried to reduce it to as close to zero as possible and we have had very stringent regulations and rules placed on the American tuna fleet.

In the 1988 amendments to the Marine Mammal Protection Act you had one philosophy there: continue to put pressure on the U.S. industry to reduce dolphin deaths and to use trade embargoes to compel performance out of foreign fleets. You did not address the question of encirclement which is at the heart and the soul of this problem.

And if the goal of the United States is to end encirclement, which the last message from the Congress says is what the goal of the United States is, then my job is to negotiate toward that goal. It is not to negotiate toward some other objective.

Now I am confident that if IATTC could have put together what it put together in April and June of this year, if we could have put that together 18 months ago, we might be looking at a very different picture here.

But we were unable to do that until it looked quite clear that the United States was going to move to eliminate sets and that we could get the other governments to go along with this; and I think we can get the other governments to go along with this.

It is clear that the fishing industry would prefer the IATTC approach—

Senator BREAUX. What do you tell your IATTC colleagues when you have your next meeting with them?

Ambassador COLSON. It depends on what this Congress has done. If this Congress has—

Senator BREAUX. When they say, Ambassador, when you left last month, we all said what a great agreement we have and I can read you back your statements and the State Department's real claims of success. When they say, what happened in 4 weeks that made you go from that agreement as the policy of the United States to walking away from it and unilaterally saying we are going to be the only country that is going to do it our way and you got to agree, folks, and we only assume about 45 percent of the world's tuna. There are a lot of places they can sell it other than here.

They do not have to follow our domestic law one iota and yet you had an agreement that would have accomplished that. What do you tell those other countries when you have to go to the next meeting after your testimony today?

Ambassador COLSON. Senator, I would tell them what I told them then, that the administration was going to continue to pursue this moratorium proposal because we thought it was the best way out of the overall controversy, and that it was likely to be the law that could pass the Congress and not something based on an IATTC approach.

Senator BREAUX. My position is clear and it is obvious, I feel very strongly about it, because we should be managing fisheries by management techniques, not by political techniques and the scientists, our own National Academy of Science clearly disagree with a unilateral approach.

All of the professionals in the National Marine Fisheries Service of NOAA would argue for a multinational agreement and not unilateral action. And I tell you that if we somehow got this legislation to pass, you will do more harm to dolphins in the seas of the world than if we follow the international agreement.

If somehow this is ever passed and signed, environmental groups that see this as their No. 1 priority will regret the day they supported it because dolphins will continue to be caught in larger numbers by countries who will just say, we have had it with the United States, and we are not following their unilateral action. Thank you.

Senator KERRY. Do you have any comment?

Ambassador COLSON. The only comment I would make, Senator Kerry, is if we do pass a moratorium proposal, we will dedicate ourselves to making sure that it works internationally all the way around the world.

Senator KERRY. It is fair to say—let us come back to this question of multilateralism, that it does not go into effect unless it is accepted by the other countries, or not? I am saying, is that the approach that you think ought to be taken or do you think that it ought to be on the United States and if the others do not follow, tough.

Ambassador COLSON. Senator, the way H.R. 5419 is structured, and the way that the bill I understand you introduced yesterday

is structured, the moratorium, the commitment to a moratorium relates to conditions under which a country must commit if it wants present MMPA embargoes to be removed.

And therefore, at this point in time, we are only looking at those countries who are presently embargoed as to what their commitments would be if this law was to be passed. Now if that law was to be passed it is clear that in 1994, all countries in the fishery are going to be embargoed under the Marine Mammal Protection Act because they are not going to be able to meet the comparability standards because the U.S. fleet will have a zero kill.

So, we will have to restructure a lot of international programs and refocus some international negotiations if we go down the moratorium road. But the way the bills are structured, they are just the kinds of commitments we would need to receive if we were to lift the embargoes.

Senator KERRY. I understand that. I am really exploring whether our own approach is at this point sufficient. I am trying to take it as a starting point and explore whether or not it needs to be refined in a way that addresses some of these concerns, that can still move toward the moratorium but does not do it perhaps so—without the capacity to achieve the moratorium, without moving automatically into the banning stage if you will, which I take it, you would agree, given the GATT experience we had with Mexico is obviously problematical.

Ambassador COLSON. Senator, I think all of us that have been involved in this issue, and Senator Breaux would agree and the industry would agree and the environmental groups would agree, would like to find a way of taking this controversial issue and moving it into an acceptable end-game solution that we can support in the United States and that the international community will support.

And we will be delighted to work with this committee to see if we can put that together.

Ms. WILSON. May I comment on that? I think it is important to remember that the legislation that we are recommending be enacted by Congress is not a unilateral effort by the United States. It clearly relies on international commitments. The moratorium would take effect within the international context as explained by Ambassador Colson and that is, for countries that are currently embargoed.

Senator KERRY. Right, but the point that is made by all parties is that there is—in essence we are setting the standard and we are saying, you meet this standard or you do not get the benefit of lifting the embargo.

And there is a difference between the House and the Senate on shrimp but other than that, the basic items which remain embargoed are embargoed. So, our people have to adhere to a certain standard, and I sound, to some I may sound sort of raising a criticism of our own piece of legislation, I am trying to walk a line here that sees if there is not a way of building a stronger consensus here because I think we are going to have some problems in trying to this move this one way or the other as it is currently constructed. That is just my sense.

And I am concerned about the capacity of people to avoid—particularly given the confusion that is now in existence, notwithstanding your oral statements to the contrary, there is a confusion that exists about where people stand with respect to the international steps that would be taken.

And I think you are in a much stronger position obviously if Venezuela, Mexico, et cetera are really there and you know they are there ahead of time. If you do not, then you are really getting into a very murky area here.

Ms. WILSON. Mr. Chairman, on another matter, as far as whether we would be saving more dolphins or losing more dolphins as a result of this legislation, clearly in the perspective of NOAA who is charged with conserving and protecting marine mammals, we believe that more dolphin will be conserved by the moratorium, assuming of course that it is multilaterally applied, and that is our expectation. The country of Mexico—

Senator KERRY. I do not question that. That is one of the reasons why, obviously, it is introduced and clearly that is true. But you have to also balance that against the statement you just made, provided it is multilaterally accepted.

Ms. WILSON. Well, that is our intent of course, as it is yours.

Senator KERRY. And that is the key and that is the bottom line. Also, I think it is critical to continue to emphasize the distinction between a process, approach that continues encirclement versus one that seeks alternatives, and I think the core approach that I still am very strongly advocating is that we have got to move some way to find that alternative that creates the zero kill capacity.

Ms. WILSON. Mr. Chairman, I did also find out, we published on May 18 in the Federal Register our plan on the alternative fishing techniques for yellowfin tuna in the Eastern Tropical Pacific that would not include any research on encirclement of dolphins. So, we have proposed our plan and it really was a timing issue in our budget, not a policy decision.

Senator KERRY. I appreciate that.

Yes, Senator Breaux.

Senator BREAU. Let me ask counsel on this, from a legal standpoint, is there anything in this domestic legislation that, if it was enacted today that when the drop-dead date of 1994 occurs, is there anything in our domestic legislation that would prevent other countries that are in fact fishing for dolphin like Colombia and Costa Rica and Ecuador and Mexico and Panama and Spain and Vanuatu and Venezuela and the others that make up the 13 that are members of IATTC, is there anything in this domestic legislation that would prevent them from continuing to fish on dolphins without regard to any reduction quotas, and they just decided we are just not going to sell tuna to the United States and if so, what?

Mr. CAMPBELL. I think what we have relied upon in this is the expertise of Ambassador Colson—

Senator BREAU. I am talking about the domestic bill that is pending before this Congress. Is there anything in that bill that would prevent all of the countries that are now fishing for tuna on dolphins to just say, we are not abiding by it and in addition, we are not worrying about reductions and we are not doing any research and we are not doing any changes in the methods of fishing.

We are just not going to worry about selling tuna to the United States.

Is there anything in this domestic legislation that would prevent them from doing that and if so, where is it?

Mr. CAMPBELL. Senator Breaux, as you know, they would be in the same situation that Mexico and Venezuela currently find themselves in, they would be embargoed from importing any tuna into the United States.

Senator BREAU. That is the premise of my question.

Mr. CAMPBELL. That is the leverage and it is the size of the United States that provides the leverage.

Senator BREAU. Let me repeat the question. Is there anything in the domestic legislation that if those countries I just mentioned said we are not going to sell tuna to the United States, we are going to continue fishing on dolphin like we were, we are just not going to sell tuna to the United States, what in this domestic legislation prevents them from doing that?

Mr. CAMPBELL. I did not mean to be unresponsive, I was simply saying that they would not be covered by this legislation. This legislation only covers countries that have been embargoed and availed themselves of an extraordinary method of getting out from under—

Senator BREAU. So, the answer is that they can continue their fishing practices like they want, that this domestic legislation does not prevent them or get them to do one thing.

Mr. CAMPBELL. But the MMPA would provide an embargo against—

Senator BREAU. Right, and they go sell it to 55 percent of the rest of the world that constitutes the tuna market.

Mr. CAMPBELL. As a practical matter, Senator Breaux, we have seen the tremendous incentive that it provides for other governments to take extraordinary—

Senator BREAU. That may be correct in the absence of the international agreement that Ambassador Colson so successfully negotiated which should be the last of United States.

Mr. Chairman, I think that clearly points out the folly of acting unilaterally because we could not impose our unilateral desires on countries in the absence of an international treaty which has been successfully concluded in June.

Thank you.

Senator KERRY. I might add that the legislation that you have introduced also would have the same impact imposing, only other countries—

Senator BREAU. The difference—

Senator KERRY. Unless they were commensurate with the agreement that they were willing to live up to, so both—

Senator BREAU. The difference is they have agreed to that. They have signed agreements saying that is fine, we accept that.

Senator KERRY. I agree, but what I am saying is that unless you have the international agreement piece, and I have said as a predicate to this—I mean, in my opening comments and subsequently, that any approach is predicated on a multilateral agreement.

If you cannot have a multilateral agreement, and I reemphasize I am not into passing pyrrhic, you know, U.S. statements or mes-

sages that merely handicap us and disadvantage us without understanding that the others are coming along.

I think the notion that we are prepared to, and that we want a nonencirclement approach, is a critical one for those other nations to understand, but it is up to you to be able to bring us the assurance that the enforcement mechanism and willingness is there so that we are not put in the position of unilaterally turning over an industry.

Mr. CAMPBELL. Senator Kerry, I think that is in fact why the Government has a State Department and we have very capable Ambassadors working in the field like Ambassador Colson.

Senator KERRY. I understand, but there are major issues. We are going to hear momentarily from some of the other witnesses—and they will express some of those concerns, but the concerns are obvious.

When you have these kinds of letters of confusion sitting in front of us I must tell you candidly I could not go to other colleagues who are not here today if they read both of those letters and give them an assurance, and you know that. I cannot persuade them how to vote on this based on this confusing record.

Ambassador COLSON. Senator, just to respond—and I—for the administration, we are not into disadvantaging U.S. industry as against the foreign industries, as well. This was put together nicely on March 3, and there has been a lot of water that has gone under the bridge between then and now. We have done our best to hang onto the deal that we had on March 3, and we have had some confusion in the last few days. We went to work last night to be able to tell you orally—

Senator KERRY. I appreciate that.

Mr. CAMPBELL. And certainly what you are saying is correct, and we cannot be taking our industry out of this business in March 1994 if we have not got the other major players in this game with us. I agree with you entirely.

Senator KERRY. Well, let us see what we can do to clarify that. Clearly, our goal, and I think the—it is clear from my statements the goal remains the same, and that is to try to find a nonencirclement method and to live up to the standards of the MMPA, but we are going to have to work, obviously, to see that we have that mechanism.

Let us have the next panel, because we are running low on time and I am going to have to leave in about 20 minutes, unless—can you stay a little bit—Senator Breaux can stay a little bit longer, so I appreciate that. Thank you.

Dr. James Joseph, director of the IATTC, Mr. David Phillips, executive director, Earth Island Institute, Mr. Richard Atchison, executive director, American Tunaboat Association.

Gentlemen, I entreat you please, the lights will work. Keep it to maybe, if you can, a 4-minute summary. I think the issues are joined here. You know pretty much where we are going and what we need to chat about, so it would be very helpful if you could do that. Do you want to lead off, Mr. Phillips?

**STATEMENT OF DAVID PHILLIPS, EXECUTIVE DIRECTOR,
EARTH ISLAND INSTITUTE**

Mr. PHILLIPS. Thank you, Mr. Chairman. I think since time is short I would like to respond to some of the points brought up by earlier speakers.

In response to Senator Breaux, I do feel we have a method of dealing with countries who would choose to avoid the current MMPA requirements, in addition to the loss of U.S. tuna markets. That is, those countries, under the MMPA secondary nation embargo provisions, cannot sell tuna to third-party countries that then trade with the United States. As a result of that leverage, numerous countries—some 12 countries, including Thailand and others, have banned import of dolphin-unsafe tuna products.

Further, I think it is essential to point out that we do not need legislation in order for the IATTC proposal to take effect. That agreement has been negotiated on the part of the countries of the IATTC during the past 6 months. Those countries have agreed to it, the United States has agreed to sign it, and the quota levels in that proposal are taking effect.

We do not need U.S. legislation for that plan to take place.

Senator KERRY. For which?

Mr. PHILLIPS. For the IATTC plan. It has been agreed upon—the U.S. delegation to that group has met with the IATTC, has agreed to its plan, and it can take place without Congress taking a single step.

The question is what kind of threshold do we want to set? Clearly, the foreign countries involved in setting nets on dolphins would rather have a lower threshold, but I think the question is whether or not, if the United States takes a leadership role, they are prepared to enter into a moratorium agreement that will for the first time in history resolve this issue.

The negotiations have been long and arduous resulting in this accord. It has required concessions on the part of the environmental community and the administration to reach a workable, enforceable regime, and we have not seen anything here today to indicate that the major country involved in the fishery, Mexico, will not go along.

Mexico is giving something and it is getting something. They are giving in agreeing to resolve the problem. They are getting relief by having the embargo lifted. If none of this takes place, they and the other countries will implement the IATTC plan.

People around the world have spoken resoundingly that this is the time to end the killing of dolphins. The largest tuna companies in the world have heard this, in 1990 going dolphin safe. Cannerys and importers in the United States, U.K., Thailand, France, and Germany, have stopped import of dolphin-unsafe tuna.

Even traditional markets for dolphin-unsafe tuna from Mexico and Venezuela, in Italy and Spain, the largest purchasers of dolphin-unsafe tuna, have now announced new policies that they are not going to buy that tuna any more.

Most of the U.S. vessels have heard. In 1988 when we were here discussing the reauthorization of the Marine Mammal Protection Act, 37 U.S. vessels were setting on dolphins day in and day out. Now there are six U.S. vessels operating in the ETP, of which only

two or three are routinely setting on dolphins. Most of the other U.S. boats have moved to the Western Tropical Pacific, and in so doing the U.S. Government has provided for those fishermen.

We are now paying \$14 million a year to have up to 55 U.S. tuna boats have access to the fisheries of the Western Tropical Pacific. These are specific payments allowing U.S. vessels an alternative to the practice of killing dolphins. Many vessels have taken advantage of that.

The last few remaining U.S. boats that are setting their nets on dolphins could do the same thing. There are vacancies under the current scheme and we are paying for them. They can operate there with purse seine nets without killing dolphins.

The European Community has taken steps to enact the global moratorium. They have recently prevented their nationals from engaging in the practice of encircling dolphins. This includes Spain, which has regularly had vessels in the ETP.

Even the Mexican fleet is in flux. We just received a letter last week that five of the vessels in the Mexican tuna fleet are announcing that they are going dolphin-safe.

There is an emerging global consensus that this is the time to resolve this issue. The IATTC plan would allow the killing of 55,000 more dolphins than are allowed killed under the moratorium plan. That is unacceptable. The idea of giving further concessions to those countries that have already agreed to undertake the IATTC approach, by lifting the current tuna import embargo is something that the coalition that I represent—25 organizations—is strongly opposed to.

We think the time is right for the United States to take the leadership role, to set a standard that will result in worldwide, ecologically sound fishing practices. We need a level playing field that will not undermine the actions of the dolphin-safe companies and importers in the United States and around the world.

Thank you.

[The prepared statement of Mr. Phillips follows:]

PREPARED STATEMENT OF DAVID C. PHILLIPS

Mr. Chairman and members of the Committee, thank you for the opportunity to testify today. My name is David Phillips and I am the Executive Director of Earth Island Institute. I am testifying today on behalf of a coalition of 25 organizations listed on the cover sheet of this testimony. These organizations have a strong commitment to ending the practice of encirclement of dolphins in the Eastern Tropical Pacific (ETP). Their combined membership in the United States is more than three million individuals.

OVERVIEW

Our coalition strongly supports the International Dolphin Conservation Act of 1992 (H.R. 5419) to rapidly reduce dolphin mortality caused by the U.S. and foreign tuna fleets, and to initiate by March 1, 1994, a moratorium on all setting of nets on dolphins. In our view this is the most significant legislative step for the protection of dolphins since the inception of the Marine Mammal Protection Act (MMPA) in 1972.

The accord embodied in this bill is the product of intensive efforts with the Congress, the Administration and the tuna processors to ensure that the proposal is effective, enforceable, and succeeds in eliminating dolphin mortality associated with tuna fishing in the Eastern Tropical Pacific and around the world.

It is extremely noteworthy that the Mexican and Venezuelan governments at the highest levels have indicated support for the moratorium proposal. The three countries currently agreeing to the framework of the International Dolphin Conservation

Act represent more than 90 percent of the entire purse seine fleet operating in the ETP.

Our coalition believes that it is time for an end to the practice of encirclement of dolphins as a method of catching tuna. Citizens and consumers demand it. Environmental groups are unanimous in their support of it. The Administration agrees that it is the right thing to do, as do the principal foreign governments involved in the fishery. We urge you to enact this legislation immediately and thereby provide the framework for the resolution of a critical issue which has for so long defied solution.

For more than thirty years, extremely large numbers of dolphins have been killed every year by the practices of the tuna purse seine fishery in the Eastern Tropical Pacific. More than seven million dolphins have been killed since the technique of intentional encirclement of dolphins was first employed thirty-four years ago, making it the largest killing of marine mammals in history. Far more dolphins have been killed in the ETP by the tuna fleets from a handful of nations, than the combined kill of all whales by all whaling nations in all of history.

Dolphin populations in the ETP have suffered dramatic reductions because of this intentional chase and capture. Several of the area's species, such as the eastern spinner (*Stenella longirostris orientalis*) and northern offshore spotted (*Stenella attenuata*) dolphins have been depleted by well over 60 percent of their original numbers.

The slaughter of dolphins in tuna nets was one of the primary rationales for passage of the Marine Mammal Protection Act in 1972, yet twenty years later large numbers of dolphins are still being killed. U.S. and foreign tuna fleets killed more than 27,000 last year alone.

Four years ago, during the 1988 reauthorization of the MMPA, provisions were added requiring foreign countries exporting tuna to the United States to meet specific dolphin mortality rate levels comparable to those of the U.S. fleet. Embargoes were imposed on countries failing to meet these requirements, and without doubt these regulations have spurred nations into more ecologically responsible behavior. Two of the six nations whose fleets regularly employed the technique of setting nets on dolphins in the ETP, Panama and Ecuador, complied with the MMPA regulations by passing laws prohibiting all encirclement of dolphins.

In April 1990, the U.S. tuna industry, led by H.J. Heinz, Inc., responded to the demands of consumers by adopting worldwide dolphin-safe policies. BumbleBee and Chicken of the Sea followed the StarKist policy and also agreed to only sell tuna caught by methods which did not cause injury or death to dolphins. This historic action put the world's largest tuna processors on record against all sale of tuna caught by the encirclement of dolphins.

Since that time, consumer demands for similar action have spread around the globe. As the markets for dolphin-unsafe tuna have collapsed, most of the U.S. tuna seiners which had for decades killed dolphins in the harvest of tuna, instead relocated to the Western Tropical Pacific (WTP) where they continue using purse seine nets to catch tuna, but without causing dolphin mortality. Today, only six U.S. vessels continue to operate in the ETP and of these, only three are routinely setting nets on dolphins as a method of catching tuna.

Thailand, the United Kingdom, France, Germany, the Philippines, Australia, and, more recently, Spain and Italy have now joined the growing list of countries which have abandoned purchase of tuna caught by the killing of dolphins. And the European Commission as a bloc just last week took a major step toward implementing the global moratorium called for in the International Dolphin Conservation Act.

These developments have set the stage for the single best opportunity to resolve the tuna/dolphin problem in history.

THE NEED FOR LEGISLATION: AN ASSESSMENT OF THE CURRENT DOLPHIN PROTECTION PROGRAM

There is strong need for the International Dolphin Conservation Act of 1992. It establishes an enforceable regime for eliminating dolphin mortality caused by the setting of nets on dolphins by March 1, 1994. It calls for rapid phase-out the current U.S. annual dolphin kill quota of 20,500; a level clearly unwarranted in the present situation. It builds upon enforcement mechanisms that have worked.

The importance of retaining provisions prohibiting tuna imports from countries not complying with the MMPA

Provisions of the MMPA [16 U.S.C. Sec. 1371(a)(2)] require that the Secretary of the Treasury prohibit the importation of yellowfin tuna and tuna products from countries which harvest tuna with purse seine nets in the ETP if the harvesting

nations' regulatory program to prevent the killing of dolphins and their rate of dolphin mortality per set is not comparable to that of the U.S. fleet.

The "comparability" provisions were enacted in 1984 to address the dramatically increased kill by foreign fleets and the need to prevent lucrative U.S. canned tuna markets from acting as an incentive for the continued killing of dolphins at rates higher than those achieved by U.S. fishermen.

From 1984-1988 the Commerce Department took no action to close our tuna market to offending nations, even though it was apparent that foreign dolphin kill rates were three to five times the U.S. average. Therefore, in 1988, Congress added specific rates and deadlines for determining comparability.

As Representative Gerry Studds, distinguished Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment stated (October 4, 1989):

"We do not have the power to regulate foreign fishing operations in foreign waters or on the high seas. But we do have the right to bar our markets to any nation that does not share our concern for the conservation of marine mammals. The amendments we approved last year require the Executive branch to exercise that right, to tell any nation that harvests tuna without taking dolphin-protection measures comparable to ours that they will no longer have access to America's supermarket shelves * * *

With respect to the foreign rate of dolphin kill the MMPA statute requires that:

"* * * (II) the average rate of the incidental taking by vessels of the harvesting nation is no more than 2.0 times that of the United States vessels during the same period by the end of the 1989 fishing season and no more than 1.25 times that of the United States vessels during the same period by the end of the 1990 fishing season and thereafter."

Beginning in 1990, the Commerce Department, under order of the federal court (*Earth Island Institute et al. v. Robert A. Mosbacher et al.*), began restricting the importation of certain types of tuna from countries not meeting the MMPA requirements. Since 1990, Panama, Ecuador, Mexico, Venezuela, Vanuatu, and Colombia have been subject to tuna import embargoes.

In 1990 Panama and Ecuador enacted laws prohibiting their fleets from using the practice of setting nets on dolphins and thus were allowed to resume all tuna exports to the U.S.

In 1992 Vanuatu provided evidence that it had complied with the comparable mortality rate requirements and thus were allowed to resume all tuna exports to the U.S.

Mexico, Venezuela, and Colombia still fail to comply with the MMPA requirements and are thus prevented from exporting yellowfin tuna caught with purse seines in the ETP into the United States.

There is little doubt that the use of trade restrictions has had a profoundly positive effect on dolphin conservation. It has helped persuade countries to prohibit the killing of dolphins. It has provided the leverage to encourage foreign countries to carry more observers, use better dolphin-saving equipment and techniques, require better training of captains, enact prohibitions on the use of explosives, stop the setting on dolphins during hours of darkness and reduce significantly their dolphin mortality.

Because the United States is by far the world's largest market for canned tuna, comprising some 50 percent of the world's canned tuna consumption, we have a responsibility to ensure that procurement of this tuna does not come at the expense of dolphin populations.

In order to prevent the laundering of dolphin-unsafe tuna into third party countries, which also export tuna to the United States, Sec. 1371(a)(2)(C) of the MMPA also requires that:

"the government of any intermediary nation from which yellowfin tuna or tuna products will be exported to the United States to certify and provide reasonable proof that it has acted to prohibit the importation of such tuna and tuna products from any nation from which direct export to the United States of such tuna and tuna products is banned * * *

In January 1992 under federal court order, the Commerce Department was required to ban import of yellowfin tuna from all intermediary countries that had not acted to prohibit importation of tuna products that were banned into the U.S. Twenty nations became subject to secondary tuna import embargoes. Since January, eight countries, including the major exporters of Thailand, Taiwan, Korea, and Ecuador, have proved that they do not allow import of banned tuna and thus have been allowed to resume full imports into the U.S.

Twelve nations, most of which export very little tuna to the U.S., have yet to take the required action and are thus still subject to secondary tuna import embargoes.

The presence of these trade sanctions has had a beneficial impact on efforts to protect dolphins. Our coalition continues to believe that trade sanctions, whether they be for failure to meet driftnet ban agreements or the Convention on International Trade in Endangered Species (CITES) requirements, are often the only effective means of ensuring ecologically responsible action. Such sanctions are particularly necessary when the resources are comprised of highly migratory or threatened species which are part of our common heritage or which live outside the jurisdiction of any country.

Our coalition has made it clear that we will strongly oppose any modification of the import embargoes provisions of the MMPA unless it is part of a binding resolution to the tuna/dolphin problem. The International Dolphin Conservation Act's provisions for a rapid phase out of the dolphin kill followed by enactment of a moratorium on the practice of setting nets on dolphins by March 1, 1994, meets this requirement.

The need for removing the exemption allowing U.S. vessels to set nets on dolphins

When the MMPA was last reauthorized in 1988, there were 37 U.S. vessels operating in the ETP, all setting nets on dolphins and providing tuna without restriction to U.S. processors. The 1988 dolphin kill by U.S. boats was calculated by the National Marine Fisheries Service (NMFS) at 19,714 out of the maximum allowable MMPA quota of 20,500 kills per year. During 1991, fewer than 10 vessels routinely set nets on dolphins and the total U.S. dolphin kill was 1004.

The phenomenal changes that have taken place since 1988 have eliminated the justification of any further exemption to kill dolphins.

Total U.S. ETP Vessels—1988, 37; and 1992, -6 (of which only 3 are regularly setting nets on dolphins).

Total U.S. Sets on Dolphins—1988, -4000; and 1991, -350.

Total U.S. Dolphin Mortality—1988, 19,714; 1991, 1,004; and 1992, <500 (projected).

Yet during this time, the MMPA annual dolphin kill quota has remained fixed at 20,500. These dramatic dolphin kill reductions have taken place largely because of the constraints on markets for dolphin-unsafe tuna. The fact that 17 U.S. tuna vessels chose to relocate to the WTP is clear evidence that it is no longer economically viable to continue setting nets on dolphins. It should no longer be permitted under the MMPA.

It must be pointed out that the State Department has just concluded negotiations of a ten-year extension to the agreement with the Foreign Fishery Agency of the South Pacific Forum, which will allow even greater access for U.S. tuna seiners in the WTP. In addition to the 50 vessel cap which is currently in place, there are now five additional spots for joint-venture vessels. Any of the six tuna vessels operating in the ETP has an available alternative to relocate to the WTP. The U.S. provides a heavy subsidy to allow these vessels access to the territorial waters of the 16 Western Tropical Pacific nations. The current U.S. contribution is \$14 million per year.

SUPPORT FOR THE INTERNATIONAL DOLPHIN CONSERVATION ACT OF 1992 (H.R. 5419)

Our coalition strongly supports the framework in the International Dolphin Conservation Act for a multilateral moratorium on the encirclement of dolphins in the ETP beginning no later than March 1, 1994.

Enactment of this bill would prevent the deaths of more than 100,000 dolphins that would be killed between now and 1999 based on the current kill level of approximately 27,000 per year.

The International Dolphin Conservation Act would prevent the killing of more than 55,000 dolphins that would be allowed killed under the Inter-American Tropical Tuna Commission (IATTC) proposal in the next seven years alone.

In our view, the setting of nets on dolphins is not justifiable from a biological, technological, or economic standpoint. Ample supplies of dolphin-safe tuna are available around the world at reasonable prices. Yellowfin tuna, the primary target species in the ETP, and skipjack tuna, which is the primary target in the Western Tropical Pacific fishery are both canned as light meat tuna, and in many cases are canned together.

Contrary to claims by those who expressed opposition to the dolphin-safe policies, there has been no increase in the price of canned tuna to consumers as the result of the decision by StarKist, BumbleBee, and Chicken of the Sea to stop buying tuna caught at the expense of dolphin lives. Nor has there been an increase in dolphin mortality following the decision as was predicted by the IATTC.

Further, IATTC claims that the cessation of setting nets on dolphins will lead to depletion of yellowfin tuna are also ill founded. The reality is that in each of the

past two years there has been a reduction of total tuna vessels operating in the ETP (1990=123, 1991=103, 1992 projection=<100), and the catch of yellowfin tuna in all size classes has been reduced. There is absolutely no reason to believe that a moratorium on the practice of setting nets on dolphins would result in all past or current vessels fishing entirely on smaller yellowfin tuna.

As the market for dolphin-unsafe tuna is further constrained, the price paid for this tuna continues to drop. In some cases the price has dropped 50 percent or more. Most canneries now refuse to purchase this tuna at all. It no longer makes economic sense to continue to promote utilization of this ecologically unacceptable fishing technique. Consumers have made it clear that they do not want to purchase tuna caught by methods killing dolphins.

The International Dolphin Conservation Act is entirely consistent with the goal of the MMPA to reduce dolphin mortality to "insignificant levels, approaching zero" and with the policy of the Dolphin Protection Consumer Information Act of 1990 which specifically directs the State Department to negotiate agreements with foreign governments to eliminate the practice of setting nets on dolphins.

Some have charged that the bill does not constitute a multinational accord. In fact it does. Assurances provided by Mexico and Venezuela, together with the U.S., comprise approximately 90 percent of the total vessels operating within the ETP.

In 1993, the bill would result in immediate and significant reduction in dolphin mortality. On March 1, 1994, it would eliminate dolphin mortality for a minimum of five years. Insofar as foreign countries resuming the setting of nets on dolphins after the five-year moratorium would be subject to tuna import embargo, we believe that the effect of the legislation would be a permanent end to the practice.

We strongly support specific provisions in the bill to:

- prohibit all sale, transport, or shipping in the United States of any tuna or tuna product that is not dolphin-safe, effective March 1, 1994;

This is an important mechanism to ensure that the U.S., by far the largest consumer of canned tuna in the world, does not provide a market incentive to the setting of nets on dolphins or the use of driftnets.

- authorize \$3 million per year for each of five years for scientific research into methods of catching yellowfin tuna without encirclement of dolphins;

This will allow significant funding for non-encirclement alternatives such as laser radar (LIDAR), fish aggregation devices (FADS) and other promising fishing techniques which may be developed in the future by the private and public sector.

- require the placement of an observer on each vessel capable of setting nets on dolphins in the ETP and ensure that at least 50 percent of those observers are trained and supervised by the IATTC;

- prevent U.S. tuna vessels, after March 1, 1994, from setting nets on dolphins;

In addition to the direct beneficial effect of reducing dolphin mortality, the International Dolphin Conservation Act would make U.S. law far more defensible before the General Agreement on Tariffs and Trade (GATT). One of the principal arguments in the Mexican GATT complaint was that the MMPA's trade restrictions were discriminatory because U.S. tuna vessels were not prohibited from killing dolphins. At the point that the bill takes force, the primary and secondary embargoes would be lifted, resolving the European Commission's pending GATT challenge.

Passage of this bill would also enable the U.S. to be far more active and equitable in pursuing a global moratorium with other countries. The EC has repeatedly asked why it should ban import of dolphin-unsafe tuna when this practice is still allowed on U.S. vessels, and the dolphin-unsafe product is still allowed to be sold in the U.S.

- provide strong trade sanctions against any country that fails to honor its commitments to implement the moratorium and other elements of the dolphin protection plan.

In the case of Mexico, violation of the agreement would result in a mandatory ban on importation of fish products valued at more than \$100 million per year. We view this as a sufficient disincentive to prevent violations.

THE UNACCEPTABILITY OF THE IATTC PLAN

Our coalition does not view the Inter-American Tropical Tuna Commission (IATTC) proposal as an acceptable alternative to the International Dolphin Conservation Act, nor do we support any legislation to codify the IATTC plan. We strongly oppose any proposal to weaken the embargo provisions of the MMPA in exchange for participation in the IATTC program.

In April 1992 member governments and observer governments of the IATTC met to consider reduction of dolphin mortality caused by tuna fleets operating in the ETP. Both at that meeting and at a subsequent IATTC meeting in June, the U.S. delegation expressed the position that the proposed mortality reductions were insuf-

ficient to warrant Administration support for any change in the embargo provisions of the MMPA.

The IATTC plan would allow the following dolphin kill levels: 1993, 19,500; 1994, 15,500; 1995, 12,000; 1996, 9,000; 1997, 7,500; 1998, 6,500; 1999, <5,000; and after 1999, unspecified.

Reasons for opposition

1. IATTC proposal allows high dolphin kills to continue

The IATTC Plan would allow the killing of a minimum of 55,000 dolphins during a period in which H.R. 5419 would set the level at zero. Our coalition cannot support this perpetuation of large scale killing of dolphins.

Subscribing to the IATTC plan would be particularly unwise at a time when the Mexican and Venezuelan governments are willing to enter into agreements far more beneficial to dolphin conservation.

2. The IATTC proposal provides no end to the killing of dolphins

The IATTC plan promotes a reduction in the level of dolphin kill for the years 1993 to 1999 to a final unspecified level of "less than 5000". The plan fails to ever attain zero mortality, and implicitly suggests that the "less than 5000" threshold is sufficiently close to zero to be acceptable forever. Our coalition strongly opposes any proposal that allows this unnecessary and ecologically calamitous practice to continue indefinitely.

3. The IATTC proposal is largely unenforceable

There is no credible mechanism to ensure that any country abides by dolphin mortality levels, or other provisions of the IATTC plan. Several of the principal countries fishing in the ETP, including Mexico, are not even members of the IATTC. The IATTC has no enforcement powers; its recommendations are essentially advisory.

At the June IATTC meetings, the U.S. delegation reported that the member governments were unwilling to adopt any use of international sanctions, such as import bans or port closures, to countries violating the dolphin mortality levels.

4. The IATTC proposal unfairly disadvantages dolphin-safe companies

Companies that have adopted dolphin-safe policies continue to be adversely affected by the harvest of dolphin-unsafe tuna. These companies face unfair competition from foreign companies that choose to buy cheap dolphin-unsafe products. The IATTC plan encourages the continuation of the dolphin-unsafe tuna markets.

If the International Dolphin Conservation Act is enacted, Mexico and Venezuela's dolphin-safe tuna catch will again be allowed into the U.S., U.K., France, Spain, and Italy. By contrast, the incremental approach of the IATTC plan leaves Mexico and Venezuela in the current position of attempting to sell tuna to the collapsing international dolphin-unsafe markets at heavily discounted prices.

Under the IATTC plan, the embargoes against Mexico and Venezuela will remain in place, even while a significant part of their fleet goes dolphin-safe. Meanwhile U.S. companies are denied a source of dolphin-safe tuna at canneries closest to the ETP such as Puerto Rico, where large numbers of U.S. jobs are at risk.

Far more jobs will be saved by approval of the International Dolphin Conservation Act than by the incrementalism of the IATTC proposal.

5. The IATTC's mandate is incompatible with the MMPA

In our view, the overriding goals of the IATTC are incompatible with those of the Marine Mammal Protection Act. The IATTC's mandate is to "strive to maintain a high level of tuna production and also to maintain dolphin stocks at or above levels that assure their survival in perpetuity". On the other hand, the MMPA's overall mandate is to end the killing of marine mammals.

Further, we fear that relegating management of U.S. and foreign dolphin mortality to the IATTC could preclude meaningful public oversight. Information provided to the IATTC is not available to the public, nor is it accessible through the Freedom of Information Act.

We consider any effort to substitute the IATTC proposal for the current provisions of the MMPA to be an unacceptable threat to dolphins.

THE COLLAPSING MARKETS FOR DOLPHIN-UNSAFE TUNA

The collapse of markets for dolphin-unsafe tuna makes it clear that enactment of the International Dolphin Conservation Act is not a unilateral act, but rather a timely and appropriate action which recognizes the growing global consensus for resolution of this issue. It is fully consonant with the worldwide movement to stop the use of this indiscriminate fishing practice.

During the past two years, a powerful global consumer movement—both in the U.S. and around the world—has developed to stop all importation, processing, transshipment, and sale of tuna caught by methods that kill dolphins.

The U.S. Market

- In the U.S., the dolphin-safe corporate policy has been extended to eleven tuna companies, representing more than 90 percent of the domestic canned tuna market.
- Thousands of school children have demanded an end to the serving of dolphin-unsafe tuna in their school cafeterias, and have succeeded.
- The U.S. government tuna purchase requirements mandate that it be entirely dolphin-safe, as defined under U.S. law.
- The passage of the Dolphin Protection Consumer Information Act of 1990 now provides a uniform definition of "dolphin-safe" and requires penalties for any company that is found to mislabel its product.
- Literally millions of consumers have continued to press national supermarkets, restaurants, hotels chains and food services to sell only dolphin-safe products.
- At present there is not a single tuna company or importer who openly espouses a policy allowing sale of dolphin-unsafe tuna.

Foreign Markets

- In 1990, market pressure resulted in a decision by the Thai Food Processors Association to end the processing and sale of tuna caught by setting nets on dolphins or in high-seas driftnets. This decision affected the operations of 26 canneries in Thailand representing export of more than one-half of all canned tuna for the U.S. and European markets. The Philippine Cannery, also a major supplier, have taken similar steps.
- Both Thailand and the Philippines have cooperated in the establishment of independent monitoring programs with full access to all cannery facilities, ship logs, cold storage and transshipment areas to ensure full compliance with dolphin-safe policies. Through these efforts, these countries have been closed as sources of fish products caught by setting nets on dolphins or by high-seas driftnets.
- In 1990 the British Association of Canned and Preserved Food Importers and Distributors (BACFID) agreed to end all purchase and sale of dolphin-unsafe tuna.
- Similar policies are being enacted by importers in France and Germany.
- In July 1992, ASCONSER, the largest group of tuna canneries in Spain, joined the rest of the Spanish tuna industry in adopting dolphin-safe corporate policies. This is particularly significant since large amounts of dolphin-unsafe tuna from Mexico and Venezuela have been sold to Spain over the past decade. The action by the Spanish tuna industry is effective immediately and is expected to halt all Spanish imports of driftnet-caught tuna as well as tuna caught in the ETP by setting nets on dolphins.
- Under intense pressure, the Italian importers association, ANCIT, has also announced its intention to cease all import of dolphin-unsafe tuna by September 30th of this year.
- As an immediate consequence of the Spanish announcement, the refrigerator vessel *M.V. Noah*, which arrived in Spain two weeks ago carrying 2,500 tons of dolphin-unsafe tuna from Mexico, left port after having failed to find a buyer for its cargo. Mexican tuna industry officials had risked the lengthy twenty-day voyage to Europe without first securing a buyer for the ship's cargo because of the tremendous surplus of tuna cooking facilities in Ensenada and other Mexican ports.
- Just last week, the European Commission announced that it is taking the first steps to adopt regulations implementing a global moratorium similar to that of the International Dolphin Conservation Act. A copy of the announcement is attached as an appendix to this testimony. The action follows last November's European Parliament adoption of the Morris Report calling for an EC-wide ban on its nationals engaging in the practice of setting nets on dolphins and an import ban on all tuna caught by setting nets on dolphins in the ETP.
- Mexico is also recognizing that there is no future in harvesting tuna by setting nets on dolphins. Last week a significant portion of the Mexican tuna fleet announced plans to stop setting nets on dolphins. The Mexican government's willingness to support the global moratorium represents recognition of both the ecological importance of such action and the realities of the international marketplace.

BIOLOGICAL JUSTIFICATION FOR ELIMINATING DOLPHIN MORTALITY ASSOCIATED WITH TUNA FISHING IN THE ETP

In light of this scientific information collected by the National Marine Fisheries Service (NMFS), there is no justification for allowing the continued kill of eastern spinner (*Stenella longirostris orientalis*) and northern offshore spotted dolphins

(*Stenella attenuata*). The recent depletion findings provide further justification for adoption of the International Dolphin Conservation Act.

On June 17, 1992, the Department of Commerce proposed to list the northern offshore spotted dolphin and the eastern spinner dolphin as depleted, based on best available scientific information and as required under the Marine Mammal Protection Act.

These rulings culminate approximately sixteen years of controversy regarding the degree to which these species have been depleted by the U.S. and foreign tuna fleets.

In 1976, NMFS proposed depleted status for both species, indicating that they were at low levels relative to their initial size, well below optimal sustainable population (OSP), defined as 60 percent of pre-exploitation population levels. However after a protracted administrative law judge (ALJ) hearing in 1980, which was then sustained by a federal district court, the NMFS ruling was invalidated.

Eastern Spinner Dolphins

In the case of the eastern spinner, the court ordered an adjustment of the estimated population size from the NMFS 1979 estimate of 293,000 to 918,800.

The current best estimate is 565,800 based on the NMFS five-year trends and abundance study. This suggests that the current population is estimated to be only 33 percent of its initial levels, and clearly severely depleted.

Further, the best available scientific information suggests that there has been no statistically significant increase in the population of eastern spinner dolphins since 1979, despite actions of the MMPA.

We believe that based on this information, no further killing of eastern spinner dolphins should be allowed.

Northern Offshore Spotted Dolphins

In 1979, NMFS estimated the northern offshore spotted dolphin population at 3,150,000. The ALJ and Federal Court ruling increased the population estimate to 6,115,000.

Information from current NMFS research indicates that the best estimate in 1992 is 1,651,600, which is far less than even NMFS' 1979 estimate. Based on this information, NMFS suggests that the best current estimate is that the northern offshore spotted dolphins have been reduced to only 23 percent of their initial population. This drastic reduction is far below the level warranting status as depleted.

NMFS research also indicates that northern offshore spotted dolphins have been reduced by approximately 35 percent since 1975.

Thus in both these cases, despite the goal of the Marine Mammal Protection Act to secure the recovery of depleted populations, there has been no statistically significant increase whatsoever.

GATT AND THE TUNA/DOLPHIN ISSUE

Approval of the International Dolphin Conservation Act would provide a basis for resolution of Mexico's complaint to the General Agreement on Tariffs and Trade (GATT) while preserving in U.S. law the ability to restrict trade for the protection of the global environment.

Under provisions of H.R. 5419, a moratorium would apply to all the principal countries in the fishery, thus ensuring compliance with the equal treatment requirements of GATT. Further, by reaching an agreement with Mexico and the European Commission, the GATT challenges could be withdrawn without Council action.

The current GATT problem stems from Mexico's January 25, 1991, challenge of the legality of the U.S. tuna import embargo provisions of the MMPA, and their request for the appointment of a dispute resolution panel.

Arguments were heard in Geneva in May 1991. All U.S. and Mexico's legal submissions, oral arguments, as well as the interventions of other GATT Contracting Governments pertaining to this issue, remain entirely secret. Behind closed doors, three unelected trade officials from Uruguay, Hungary, and Switzerland weighed the U.S. dolphin protection law.

On August 16, 1991, U.S. Trade Representative officials announced that the GATT Panel had ruled that the tuna import restrictions under the MMPA are GATT illegal.

First, the Panel found that the exceptions under Article XX(b) and XX(g), which pertain to the conservation of exhaustible natural resources and the protection of human, plant and animal health, did not apply in the case of the tuna/dolphin issue. They ruled that these provisions are precluded from use for protection of resources outside of national geographic boundaries. Under this line of reasoning, measures to protect the global commons must stop at our and every other nation's borders.

Second, they ruled that the tuna import embargo was GATT-illegal because the method of production of a product could not be taken into account in determining equal treatment under GATT. GATT, thereby, found that the U.S. is obligated to treat imports equally, regardless of whether they are taken in deadly purse seiners, driftnets, or by other environmentally destructive methods.

Both of these GATT findings represent an assault on the environmental laws in the U.S. and the rest of the world. For nearly a year, the General Council of GATT has failed to rule on this matter, as the U.S. and Mexico pursue a solution. Ironically, passage of the International Dolphin Conservation Act would also remove an obstacle for the ongoing North American Free Trade Agreement (NAFTA) negotiations with Mexico.

CONCLUSION

The choice before the Congress seems to be quite clear. It is between the incremental approach of the IATTC proposal, which will continue the tuna/dolphin problem into the next century, or a fundamental resolution.

The accord represented by the International Dolphin Conservation Act has been carefully crafted during the past year to be fair, achievable and enforceable. It has earned the support of the Administration, the conservation community, millions of American consumers, and the Mexican and Venezuelan governments.

It is a landmark resolution which stands to bring about a new era of responsible fishing practices around the world. It provides a path which the European Community is prepared to follow.

It responds to the overwhelming worldwide outpouring of public opposition to the killing of dolphins for tuna. The stage is set for this historic accord to move ahead, and we urge your swift action.

Again, Mr. Chairman let me applaud your past efforts to protect dolphins and thank you and the members of the Committee for the opportunity to express our views on this matter.

Senator KERRY. Thank you, Mr. Phillips. Mr. Atchison.

STATEMENT OF RICHARD ATCHISON, EXECUTIVE DIRECTOR, AMERICAN TUNABOAT ASSOCIATION

Mr. ATCHISON. I would like to make one point which seemed to me to be a little confused in earlier testimony, which was with regard to the question what would happen to the American boats if no country agreed to any moratorium, and I would like to read to you from H.R. 5419, section 307, and the prohibitions:

It is unlawful for any person or vessel that is subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal during any tuna fishing operations after February 28, 1994, except for research purposes.

So, the key point to us is that if there is no agreement from any other countries, and it appears clearly to me because I have seen the letters that have come in from Vanuatu, from Venezuela, and from Mexico, that there is no intention to agree to a moratorium, that the United States vessels would be the only vessels that would have a moratorium imposed upon them, and that would put us out of work and out of business.

Twenty years ago, we had 154 vessels in this fleet—10 years ago, we had 107. Today, we have approximately 51. Ten years ago we had 12 tuna canneries. Today we have six tuna canneries in the United States and its possessions.

We are a distressed industry. We have lost work, we have lost jobs, we have lost our vessels, and once you take the American flag down from a U.S. tuna vessel, it never goes back up. We have not had vessels reentering this fleet. It is a proud fleet, and it is diminishing in size.

Each vessel has, with rotated crews, 20 people—20 Americans aboard the vessel plus approximately 5 port captains ashore who are supporting it. Every time we lose a vessel, we lose 25 people. We have lost four vessels in 1992. We have lost 100 people in the first 6 months of this year from 4 vessels that went bankrupt because they were unsuccessfully able to fish against many of the regulatory rules.

Those fishermen also had an investment—\$3.5 to \$4 million—in their boats. Some \$20 million was down the drain.

There are seven vessels—and this seems to be another point that is unclear to a lot of people. There are 7 vessels presently fishing in the Eastern Tropical Pacific, and there are 12 more for a total of 19—12 more fishing in the Western Pacific who have made application, certificates of inclusion, to return to the Eastern Pacific.

The reason that they want to return is because in the Eastern Pacific they are only able to catch mainly skipjack, which only reach a price of about \$200 a ton less than the yellowfin tuna, but these boats cannot come back, even though many of them are losing money in the Western Pacific, until they find out what is going to be the lay of the land here. Are they going to be permitted to fish in the Eastern Pacific?

Our vessels in the Eastern Pacific this year are releasing 99.8 percent of all of the dolphins that are encircled. These are National Marine Fisheries Service figures. The dolphin mortality from the vessels in the Eastern Pacific through the first 6 months is 253 dolphins. Probably within the year it will be about 500. It does not make any sense to us that to save 500 dolphins when we put 500 American fishermen out of work.

This will continue to go on and on. The Breaux bill, S. 2995, is a bill that I think all of the nations have worked very hard to develop. It is a bill that was crafted under a great deal of work, and it is a bill that was funded by \$4.6 million devoted to research to improve methods of releasing dolphins as well as methods of avoiding encircling dolphins by separating them before the catch is encircled.

I believe this is very practical. I believe that there are opportunities. The industry put up \$500,000 this past year to allocate it to test FAD's, which is a device that will allow tuna to aggregate around them without dolphins. There was some success, but a lot more work needs to be done on it.

There is a vessel that will soon be putting on a deep fast-dropping net that will drop so fast that it will still encircle the tuna, we hope, and allow the dolphin to escape before the net is closed. This is technology that we have received from NASA. The expense of this net that—we are not sure, may cost as much as \$1 million. This expense is being borne by the boats themselves.

We have done, we believe, everything that has been asked of us. We believe that the Breaux bill is the best bill that will save more dolphins, save more fishermen, and with regard to the issue of where does the tuna go, Mexico itself is presently consuming about 90,000 tons a year of fish that they catch from their own boats.

The whole of Mexico, Central America, South America consumption is probably something in the area of 130,000 to 140,000 tons, and any moratorium would deny those countries vessels from the

privilege of fishing in those waters and supplying that tuna, and would probably invite pirate boats in with flags of convenience to fish and take that fish and sell it to the countries anyhow.

I do not believe that the Studds bill solves the GATT problem, but I do believe the Breaux bill satisfies the GATT problem in that it would eliminate the embargoes against the countries following the IATTC program and would eliminate the secondary embargoes, and we also found or discovered recently that the jurisdiction—that the courts have ruled that the embargoes considered on the taking of shrimp were also ruled outside of the jurisdiction, so I have an idea that the present embargoes on the tuna will be probably thrown out of the 9th District Court in any case, no matter what.

The Breaux bill is a treaty that has been agreed to by the 13 countries of the IATTC, and I talk to a lot of fishermen with boats from a lot of these countries, and they all say to me, please, we pray that we can work out, that we can follow the IATTC treaty without any interference from the United States with their unilateral approach.

[The prepared statement of Mr. Atchison follows:]

PREPARED STATEMENT OF RICHARD ATCHISON

My name is Richard Atchison and I am the Executive Director of the American Tunaboat Association based in San Diego, California. The American Tunaboat Association represents the interests of 51 U.S.-flag distant water tuna purse seiners fishing in the Pacific Ocean. The 1991 production of the U.S. tuna purse seine fleet was approximately 510 million pounds of tuna with a value of \$200 million which, after canning, would be the equivalent of 743 million cans of tuna or 52 percent of U.S. domestic light meat canned tuna production.

I have worked in the tuna industry for 28 years, including 17 years with Van Camp Sea food Company holding various positions including that of President. After leaving Van Camp, I spent 11 years as President of Mitsubishi Foods, U.S. and their subsidiary, Caribe Tuna Inc. For the past nine months, I have been the Executive Director of the American Tunaboat Association. I have managed the operation of tuna canneries and tuna purse seiners in the United States, Puerto Rico, Mexico, South America, West Africa, Southeast Asia, Micronesia and American Samoa.

It is a pleasure to appear today to discuss legislation of critical importance to the operation of the U.S. distant water tuna purse seine fleet. My testimony will address (1) the current state of the U.S. tuna industry; (2) our support for Senator John Breaux's bill; and (3) our opposition to H.R. 5419, which was recently reported by the House Merchant Marine and Fisheries Committee.

We believe this Congress has an opportunity to address definitively the on-going domestic and international controversy over the incidental mortality of dolphins during yellowfin tuna purse seine fishing in the Eastern Tropical Pacific Ocean (ETP). While seeking to achieve this goal, we urge you to establish policies which address the issue realistically, on the basis of sound scientific data and information not emotion and short-term expediency. As has been recently pointed out by a special research committee of the National Academy of Sciences, only by addressing the problem in this manner, and in concert with all other nations fishing the ETP, will an enduring solution be found.

CURRENT STATUS OF U.S. TUNA INDUSTRY

Before commenting on the proposed legislation, I would like to comment on the current condition of the U.S. tuna industry. Less than ten years ago there were 12 tuna canneries in the U.S. and its possessions. Today, there are only six remaining. Twenty years ago the U.S. tuna fleet was comprised of 154 vessels; by 1982 the number was reduced to 107; today there are only 61. We estimate that as a result of closing half the U.S. canneries and losing half the U.S. tuna boats by attrition or sale to foreign countries, along with the near elimination of construction of new U.S. tuna boats in American shipyards and the shutdown of the various support industries, provisioners and equipment manufacturers, we have lost over 30,000 jobs in this industry and over a billion dollars of gross revenue since 1983. At the same time the consumption of tuna in this country has continued to increase. The lost

American flag vessels, canneries, and jobs have gone offshore to foreign owned canneries and foreign owned tuna fishing vessels.

In the first six months of 1992, the U.S. flag purse seiners *Claudia B. Pisces*, *Cheryl Marie* were sold at bankruptcy to foreign owners and the *Connie Jean* has been forced to tie up in Florida. That is a loss of approximately 100 California jobs and a financial loss of about \$14 million to the owners.

A major factor in the loss of a large portion of this industry pioneered by Americans is attributable to foreign owners of tuna canneries and tuna boats avoiding well intentioned but costly environmental regulations, including the excessive over protection of dolphins found in association with yellowfin tuna in the ETP. U.S. environmental mandates have clearly given an important cost advantage to foreign canning and fishing operations. They are not the sole factor, but still are an important reason for the American loss of its previous dominance in the production of canned tuna. As an example, immediately following the enactment in April, 1990 of the Dolphin Protection Consumer Information Act, two tuna canneries in Puerto Rico closed and announced they could not operate because they lacked an adequate supply of tuna from the ETP. This was as a result of the movement of 16 American-flag vessels to the Western Pacific and the sale of seven other U.S. flag vessels to foreign nations.

OUR SUPPORT FOR THE NEW IATTC DOLPHIN PROGRAM

At a special meeting of the Inter-American Tropical Tuna Commission (IATTC) held in La Jolla, California on June 17-18, 1992, nine countries (Columbia, Costa Rica, Ecuador, Mexico, Panama, Spain, the United States, Vanuatu, and Venezuela) agreed to a new dolphin protection program that will include nearly every tuna purse seiner fishing on dolphins in the ETP. Significantly, Mexico, with the largest tuna fleet in the region, will be rejoining the IATTC after a lengthy absence from the Commission to participate in this new program.

The new IATTC program will place stringent controls on dolphin mortality by setting annual quotas on a nation-by-nation, vessel-by-vessel basis, subject to an agreed-upon overall limit for each year. Once any individual vessel reaches their overall limit of dolphin mortality, fishing for that vessel must cease. An observer is required on every vessel for enforcement and scientific purposes. A special new Review Panel was established to oversee compliance by all fishing vessels. Member nations also created a new Scientific Advisory Body to undertake research on finding ways to modify current fishing technology to further reduce dolphin mortality and to find ways to capture yellowfin tunas without any injury to dolphins. This research program was funded with \$4.6 million by the signing nations.

Senator Breaux's bill would implement the IATTC program for the United States. We strongly support this legislation. Unlike H.R. 5419, we can be certain that nearly every major fishing nations in the ETP will be following this commonly agreed-upon solution to the tuna/dolphin controversy. It is often forgotten that both the dolphins and the tuna are located entirely outside the jurisdiction of the United States, and are found either on the high seas or in the sovereign Exclusive Economic Zones of Central and South American countries. We cannot realistically expect that unilateral or bilateral solutions can be imposed by the United States on all fishing activity that might occur in this vast area of the ocean. Therefore, Senator Breaux's bill is the most reasonable approach, one based on this country's long history of encouraging and relying upon multilateral regional organizations for the management of living marine resources. And it will preserve U.S. jobs while protecting dolphins.

Upon enactment of this bill, we would expect that U.S. tuna vessels operating in the ETP would continue to be required to fish in compliance with the Marine Mammal Protection Act (MMPA). In addition, our vessels would have to comply with the quotas set by the IATTC Review Panel under the new program. These quotas will likely be less than those now allowed under the General Permit issued to the A9A under section 102(h) of the MMPA. In stark contrast, H.R. 5419 would outlaw our fishing practices entirely as of March 1, 1994, whether any other nation agrees to such a moratorium or not. We believe that dolphins can be adequately protected without banning tuna purse seining, through fishing practices that our fleet pioneered and perfected and are now effective in releasing 99.8% of all dolphins unharmed.

As we all know, a dispute resolution panel of the General Agreements on Tariffs and Trade (GATT) found that U.S. embargoes against tuna imports imposed on the basis of the MMPA violated the GATT agreement. The case was brought by Mexico and was supported by Australia, the European Economic Community, Indonesia, Japan, Korea, the Philippines, Senegal, Thailand, Venezuela, Norway, among others. The embargoes are currently in place as a result of the wide-ranging interpreta-

tion of the MMPA in the case of *Earth Island Institute v. Mosbacher*. Although not yet formally adopted, the dispute panel decision has nonetheless resulted in a major trade problem for the United States, particularly (but not solely) because of negotiations toward a North American Free Trade Agreement.

Representatives of the Executive Branch have been seeking a solution to this problem by asking Congress to amend the embargo provisions of the MMPA, so as to terminate the embargoes and prevent the adoption of a resolution against the United States by the GATT dispute panel. To this end, the Administration has supported enactment of H.R. 5419. However, we submit that Senator Breaux's bill is a far better and more broadly-based solution to the tuna/dolphin controversy than the purported "global moratorium" on tuna purse seining that is the hallmark of that ill-advised bill. First, nine countries support and have already ratified the IATTC program (including Mexico and the United States). With the inclusion of the Tauzin amendment, H.R. 5419 is not presently acceptable to any country fishing in the ETP. Second, Senator Breaux's bill is more likely to satisfy the nations affected under GATT as a multilateral solution to a regional problem. Finally, Senator Breaux's will create no incentive for fishing vessels to transfer flags as a way of avoiding a moratorium.

OUR OPPOSITION TO H.R. 5419

The House Merchant Marine and Fisheries Committee hastily approved a bill that requests other nations to agree to a global moratorium on purse seine fishing on dolphins beginning March 1, 1994. If another nation (such as Mexico) should agree to this moratorium, the current embargo against that nation's tuna and tuna products would be lifted. This not only means that dolphin "unsafe" canned tuna but also tuna caught in a manner that is less protective of dolphins than the MMPA requires of U.S. tuna fishermen would be allowed into our markets immediately. The moratorium would only be terminated if Congress agrees to a resolution ending it.

We most resolutely oppose H.R. 5419 for several very compelling reasons. First, according to the National Research Council, purse seine fishing for yellowfin tuna cannot be effectively conducted without setting on dolphins. Thus, no practical alternative exists for our fishing practices and none is likely to be found before March 1, 1994. Consequently, the moratorium is the death-knell to our fleet's fishing in the ETP. If H.R. 5419 passes, the remainder of our vessels will move to other fishing grounds (if they can) or be sold, probably well before 1994 deadline.

Second, the abundance of yellow fin tuna (500 million or more pounds) with a value exceeding \$200 million will always attract tuna vessels with flags of convenience to fish the ETP. These flag of convenience nations will be generally unconcerned with the sanctions contained in H.R. 5419 and may have little if any concern for dolphin protection.

Third, we are absolutely convinced that other nation's will not abide by the moratorium and the only fleet that will cease setting on dolphins will be ours. It is simply unrealistic to believe that other countries will forgo catching a large food resource such as the yellowfin tuna in the ETP.

Fourth, the affected dolphin populations in the ETP are estimated by NMFS to number 8 million and are neither endangered or threatened by current fishing practices. In fact, the recent reductions in dolphin mortality have been significant as foreign fleets utilize the technology and practices developed by U.S. fishermen. The issue presented to you today by various environmental groups is about absolute protectionism, and dolphin survival is not questioned by scientific information or opinion.

Finally, H.R. 5419 represents very cynical treatment of the U.S. tuna fishermen who, for so many years, was told by Congress to clean up his act. Now, after achieving near perfect success, H.R. 5419 would arbitrarily end all U.S. purse seine fishing on large yellowfin tuna in the ETP, regardless of whether or not any other nation agrees to such a practice.

We estimate that the seven vessels presently fishing in the ETP and the 12 additional vessels who have filed certificates of inclusion under the MMPA to return to the ETP could be forced into bankruptcy as the *Claudia B. Pisces*, *Cheryl Marie* and *Connie Jean* were earlier this year, thereby eliminating another 475 American jobs and another \$100 million of U.S. investment.

This bill sets a frightening precedent for other environmental issues, as it will be impossible for any type of fishing activity in this country to meet the marine mammal protection standard contained in H.R. 5419.

Senator KERRY. But is that not expected, Mr. Atchison? I mean, there is no surprise here. There is no surprise in these letters, really, from Venezuela and Mexico. I mean, if everybody can continue to do what they are doing now, people are going to be happier who are in the industry, correct?

Mr. ATCHISON. This was no surprise to me about the letters because I never believed the State Department could ever negotiate a moratorium with the other countries.

Senator KERRY. That is not absolutely accurate. These letters do not suggest that you cannot have the moratorium. What they suggest is that if the United States does not pass the law, they are happy not to go along with it. In other words, they are really saying in these letters, we are not going to accept—we do not want to accept a burden unless of course you make us accept the burden.

So, the letters are very understandable. I have asked for a clarification on them because I know that with colleagues, without the clarification, it is going to be hard to unwrap the confusion, but I understand what is going on here.

What they are saying is, those letters do not undo their willingness to go along with the moratorium. Those letters merely state that in the absence of it, we would certainly be happier going along the other way, which is where everybody is.

The problem is, it does not get you away from, at any point in time, either the violation of the Marine Mammal Protection Act or the goals of Congress so stated to end encirclement, or the stated intention of your industry to try to move to a nonencirclement process of fishing. It simply continues it.

I mean, even the Breaux bill at the out-years winds up 5,000 per year dolphin kill. So, you are really saying to us, Congress we do not want you to mean what you say. We want you to accept a standard which continues to accept encirclement as an acceptable means of fishing.

Whereas, Congress is really trying to say no, we want to move to a new way of fishing. Do you see what I am saying? Now how do we get to that if we accept what you are saying?

Mr. ATCHISON. I do not mean to be argumentative, Mr. Chairman, but the Marine Mammal Protection Act does not ban encirclement. It calls for an effort to—

Senator KERRY. I understand that—

Mr. ATCHISON [continuing]. To reduce dolphin mortality to a level approaching zero which is not really absolute zero. There are 8 million dolphins in population, as testified by the National Academy of Science. The recruitment is something in the area of 250,000 or more new dolphins every year, and the IATTC agreement would reduce the mortality to less than 5,000, I think that is statistically zero and I personally believe that complies with the Marine Mammal Protection Act.

Senator KERRY. And that argument can be made. I cannot tell you that it cannot be under the way, under the terminology. I went back and read it and I agree with what you said. That is what it does say. But I guess the real question here is whether there is a rationale sufficiently compelling for defining zero as zero rather than as close to zero, whether there is or not and whether there

is a means to get there, reasonably, within a reasonable period of time.

I mean, that is really the issue. The consuming public has already decided what they want by virtue of the three major canning processors acceding to their perceived desire by saying we are not going to buy unsafe tuna, correct?

Mr. ATCHISON. Yes, Mr. Chairman, they have done that—

Senator KERRY. But you disagree with that? You think it is knee-jerk or wrong?

Mr. ATCHISON. We have seen a decline in the consumption of tuna in the retail market in the United States of about 4 percent since April 1990, probably not because it is labeled dolphin-safe, probably for a lot of other reasons, but dolphin-safe tuna did not resurrect this market from the economic difficulties that are taking place in the United States.

I think however I would say, come to San Diego. Come look at crew and fishermen and say to them, you are releasing 99.8 percent of all of the dolphins that you encircle, but we still want you to go to zero and if you cannot do that, sorry, you will lose your boat and you will lose your job. I just do not think it is fair.

Senator KERRY. I understand that this is what it comes down to. This is the nut of the problem right here and—

Mr. ATCHISON. Congressman Hunter and I were talking about this the other day and he said this is like the desire to reduce traffic mortalities, he said we could certainly do that if we imposed a 2-mile-an-hour speed limit in the United States, but we would not go anywhere.

Senator KERRY. Let me ask you a quick question, what is the prospect, Mr. Phillips and maybe others would like to comment, I know Mr. Joseph you have not yet had a chance to testify and I apologize, but I have to leave—I had to leave 10 minutes ago and I have to go in about 3 minutes so I want to ask this question, what is the prospect that you can, for the development of an alternative means of fishing, if you can answer this, and what do you say of the argument of tuna fishermen that if you are not fishing as responsibly as possible on a set of dolphin you are in fact never going to catch the big fish and you really are going to change the ecocycle if you will by not catching the big fish, they die off.

You are really going to wind up catching the smaller fish, taking an earlier spawn and reducing ultimately the number of fish. Do we know enough about it to really answer that?

Mr. PHILLIPS. We know some things. I think one thing we certainly know is there is a glut of tuna on the world tuna market right now. The amount of tuna caught by encircling dolphins as a percentage of world tuna supply is low. The companies want to buy dolphin-safe tuna and the result of this decision has been that there is less fishing activity in the Eastern Tropical Pacific. There is thus less pressure on all the fish stocks, less boats operating by setting nets on dolphins and most boats are able to move to other areas where tuna and dolphins do not swim together.

The last few U.S. boats have an opportunity to move to the Western Tropical Pacific where they can fish, catching the same types of fish. It is still canned as light meat tuna, yet it doesn't result in the killing of dolphins.

In my view you are not going to find the alternative methods of catching tuna without killing dolphins as long as you are promoting and justifying the continued setting of nets on dolphins. It will not happen.

If you have a moratorium, if you end the practice of encirclement of dolphins and if you fund the research intensively to look, you will find that all of a sudden the incentives change and that the industry and the Government will be forced to find dolphin-safe ways of fishing.

So, I think if you really want alternatives that do not involve encirclement, that that is very consistent with a moratorium approach.

Senator KERRY. Mr. Atchison. Dr. Joseph.

Dr. JOSEPH. Do you want me to answer that scientifically?

Senator KERRY. Absolutely.

Dr. JOSEPH. Large tuna are caught with dolphins, and the best way to fish tuna to maximize production is to catch the tuna when they are large, when they are adding more to the population by weight than is being lost through mortality.

Small tuna are caught in alternative ways, fishing on tunas with logs or fishing on free-swimming schools. And, if you shift from catching large fish to small fish you will have a reduction in the potential production from the yellowfin stock of 20 to 25 percent, and perhaps up to 50 percent.

So, scientifically, you are overfishing the yellowfin tuna stock by putting all the effort on the school fish and on the log fish. I have a whole lot of other things to say about that scientifically, but I will wait until I get into my testimony. I am sorry you are going to be gone.

Senator KERRY. I apologize for the fact that I am, but my staff will be here in I assure you adequate numbers, and I am going to read the record on this, and I also want to leave the record open so that I can submit additional questions in writing which I do have to all of you, and I apologize for the truncation here, at least of my participation. It is interesting, not as much fun as POW/MIA but it is interesting.

I would like to, if I can, ask also if those questions could be responded to in short order here, perhaps we will leave the record open for about a week and I hope that is not an inconvenience, if that is all right.

I apologize, Dr. Phillips for not having your opening statement before I leave, but I did want to try to get into some dialog.

Senator Breaux, I appreciate very much your willingness to carry on. Thank you.

Senator BREAUX [presiding]. Dr. Joseph, your statement.

STATEMENT OF JAMES JOSEPH, DIRECTOR, INTER-AMERICAN TROPICAL TUNA COMMISSION

Dr. JOSEPH. Yes, thank you, Mr. Chairman. I guess you are chairman now.

I want to briefly comment about the success that the international community has made with respect to reducing dolphin mortality since the last time we met here in this room in 1988. Under a program administered by the IATTC, mortality has been

brought down from 132,000 animals to 27,500 animals last year, an 81-percent reduction.

In addition to estimating mortality, the IATTC has the responsibility of attempting to index the abundance of dolphin stocks and, based on the studies of the IATTC as well as the National Marine Fisheries Service, there are estimated to be about 9.5 million dolphins involved in the fishery at the present time. The trends in abundance indicate stability in most of the stocks since the early 1980's, and in some of them, increasing trends in abundance.

The other part of the program that the Commission carries out is to transfer technology to the international fleet to reduce dolphin mortality. We do that by holding workshops and training sessions with skippers at ports of Latin America. We have included 315 people in these workshops over the last couple of years, 220 of them being fishing captains. The program is working reasonably well in reducing dolphin mortality, but obviously it is not eliminating dolphin mortality.

We can do a lot better. We can reduce dolphin mortality to substantially less than it is at the present time. There are three general ways that one can approach this problem. Two of them have been discussed.

The third way is to continue with the program that we have, not introduce a moratorium, not introduce limits on mortality, but keep working with the industry, trying to encourage it to improve its performance and reduce the mortality of dolphins, but the fact of the matter is, progress will be slow in the future on that.

Although we have reduced the mortality 81 percent over the last 6 years, I would venture to say that we're on the asymptote of a learning curve, so that any progress that we make in the future is going to be at a rate much slower than in the past unless we institute some sort of incentives to require fishermen to do better, and those incentives are the moratorium approach or progressive reduction.

With respect to the moratorium approach, I would like to talk about the biological implications of that and refer back to the earlier comments of Mr. Phillips and myself about the impact of a moratorium on fishing.

As I had indicated to Senator Kerry, large fish are caught in association with dolphins. Small fish are caught in association with drifting debris in the ocean or in free-swimming schools of tuna. The most efficient way, from the point of view of production, of catching yellowfin tuna is when they are large, and that is when they associate with dolphins.

A reduction or an elimination of fishing on dolphins, without an alternative way of catching large yellowfin tuna, will result in a reduction of productivity from the yellowfin stock of, as I said, 25 to 50 percent, and will actually generate growth overfishing of the yellowfin tuna stock.

There is another biological factor involved in all of this, and that has to do with Mr. Phillips' statement about ecologically sound fishing. As we know, tuna tend to aggregate with things in the ocean, and large yellowfin tuna are most often caught at the surface when they are associated with dolphins.

Fishermen can catch yellowfin tuna by encircling fish associated with floating debris and schools of yellowfin not associated with either debris or dolphins, but when they do that they catch other animals as well, including other types of tuna, billfishes, sharks, and even in some cases, turtles, not to mention—I am sorry, I am running out of time.

Senator BREUX. I would like you to focus if you could on the legislation that the committee is considering, vis-a-vis, IATTC which you are chairman of.

Dr. JOSEPH. That is what I am getting at, when they set on these aggregations there is a waste of fish. They keep the fish that they are after, the yellowfin and skipjack tuna, but the other fish, including many small-sized tuna and other species, are dumped back into the ocean dead.

Of the total catch made in sets on logs, approximately 30 percent is dumped back into the ocean dead because it is too small, and that creates an ecological imbalance in the system.

If we force the fishermen to fish only for yellowfin associated with floating debris or in free-swimming schools, we create a problem of ecosystem balance. We want to keep that in mind if we are going to be considering moratoriums and other sorts of things such as that.

Now the approach that the IATTC has taken, and apparently—I have not seen your bill, Senator Breaux, but I understand that it supports that sort of an approach, of a progressive reduction of mortality and—

Senator BREUX. Let me just comment, what it does is say that the IATTC agreement that was reached in June will be the law of the United States.

Dr. JOSEPH [continuing]. That agreement is, from 1993 to 1999, to reduce dolphin mortality in steps down to less than 5,000 animals. It does some other things that are rather precedent-setting, too, in international fisheries. It sets individual vessel quotas in an international fishery involving many vessels—that has not been done before—in a way to control the fleet and ensure that mortality is not exceeded.

It also sets up what is called a review panel, and this is a panel of Government representatives, representatives from the environmental community, and representatives from the industry to review compliance with the regulations, to ensure that countries are doing what they said they would do and to try to standardize penalties for infractions and to make recommendations to ensure that things work well.

It also sets forth a research program, Mr. Chairman, along two avenues. One avenue is to improve current technology to ensure that we can stay within the above limits. We would attempt to develop nets that do not collapse and cause canopies, because that is the factor that causes most of the mortality that we see in the fishery. If we can prevent those, mortality will go below 5,000 dolphins.

A second avenue of research is to look for alternatives and one of the goals of the agreement of the IATTC and the Marine Mammal Protection Act is to eliminate dolphin mortality through seeking alternative, ecologically sound means of catching large yellowfin tuna.

The Commission has approved a research program and a research budget of \$4.5 million to do these things. So, Mr. Chairman, my opinion is that the most ecologically sound approach to managing the tuna fishery in the Eastern Pacific, that in the long-term will provide the most benefit to the dolphins and to the other components of the ecosystem is the reasoned approach that the IATTC has taken. The agreement involves vessels from—I think I made a mistake, I think I said 13 nations, it was 12 nations that had agreed at the IATTC meeting to cooperate in this program.

They will do it willingly because they know that they can survive through this program, and we will all be working toward a system of alternative fishing that will eliminate ultimately dolphin mortality due to fishing.

Mr. Chairman, I just want to add, I am a technician, not a politician. I am not much of an administrator. My job is to provide data and factual information, and a lot of people do not like the information I provide because it does not always agree with whatever people are trying to do, but that is my job.

I hope that at this hearing I am able to provide this committee the kind of information it needs to make reasoned decisions, and when the committee makes those decisions, Mr. Chairman, I hope that it makes them for the benefit of all of the components of the ecosystem and not just one element of the ecosystem.

Thank you.

[The prepared statement of Dr. Joseph follows:]

PREPARED STATEMENT OF JAMES JOSEPH

My name is James Joseph, and I am the Director of the Inter-American Tropical Tuna Commission (IATTC), an international research and management organization established by treaty in 1949, with headquarters at Scripps Institution of Oceanography in La Jolla, California, and laboratories and field offices in California, Ecuador, Mexico, Panama, Peru, Puerto Rico, and Venezuela. The Commission's principal duties are the scientific study and conservation of the tunas and related species of the eastern Pacific Ocean (EPO), with a view to determining the effects that fishing and natural factors have on their abundance, and to recommend from time to time appropriate conservation measures to maintain the stocks of fish at levels which will afford maximum yields on a sustained basis.

In 1976 the Commission's duties were broadened to include the treatment of problems arising from the tuna-dolphin relationship in the EPO. The IATTC's objectives in this regard are to maintain dolphin stocks at or above levels that will ensure their survival in perpetuity, with every reasonable effort being made to avoid needless or careless killing of dolphins.

The IATTC's tuna-dolphin program did not become fully operational until 1986, the first year in which all nations with fleets of large tuna vessels operating in the EPO participated in the program. This program's activities include estimating the incidental dolphin mortality caused by the international tuna fleet, estimating trends in the abundance of dolphin stocks, developing and identifying fishing gear and methods effective in reducing such incidental mortality, extension work with captains and crews of the international fleet, including training sessions and workshops, and general research on the behavior and biology of dolphins, with particular emphasis on their association with tunas.

The core of the Commission's research on dolphins is the observer program. Observers are placed on all vessels of the international fleet that are capable of fishing for tunas in association with dolphins, and collect detailed information that forms the basis for much of the Commission's research. In addition, this information can be used by the flag nation to enforce national regulations for the protection of dolphins, and is the basis on which tuna from the eastern Pacific is classified as "dolphin-safe," as required by some tuna processors.

The percentages of trips since 1986 that were accompanied by IATTC observers are shown in Table I. At present, the program covers almost every trip by every vessel capable of catching dolphin-associated tuna in the EPO, with the exception

of the U.S. and Mexican fleets, for which the target coverages are 50 percent and 35 percent of the trips, respectively.

The mortality of dolphins caused by the fishery has been estimated for the period from 1959 through 1991. Annual mortality during the 1960s has been estimated at around 300 to 400 thousand dolphins, but these estimates are unreliable because they are based on small samples. The most reliable estimates of total incidental mortality are those for 1986-1991 period, during which all vessels in the international fleet participated in the IATTC observer program. The estimated total mortality in 1986 was estimated at 133 thousand dolphins; through the combined efforts of boatowners, captains, and crews, working within the framework of the IATTC program, the corresponding figure for 1991 was 27.5 thousand dolphins, or a reduction of about 80 percent in 6 years (Figure 1). In 1992, to date, the mortality is 25 to 30 percent lower than in the corresponding period in 1991.

An additional responsibility of the IATTC is to assess the impact of this incidental mortality on the abundance of the dolphin stocks. Estimates of abundance made by the Commission staff are also based on data collected by the observers; because the distribution of fishing effort within the areas occupied by the various stocks of dolphins is not random, and this problem cannot be completely overcome by stratification of the data, these estimates reflect trends in abundance rather than absolute abundance. Estimates have been made for the 1975-1991 period. The three species of dolphins most frequently set on in the fishery are spotted, spinner, and common dolphins. About 85 percent of sets on dolphins are made on pure herds of spotted dolphins or mixed herds of spotted and spinner dolphins, 40 percent on pure herds of spinners or mixed herds of spinner and spotted dolphins, and 4 percent on common dolphins. (Dolphins in mixed herds are counted twice, so the total is greater than 100 percent.) All these species are divided into stocks, each of which should be treated as a distinct unit for conservation purposes.

The northern offshore stock of spotted dolphins has been more or less stable since the early 1980s (Figure 2), while the southern stock has shown an increasing trend from its lowest point during the mid-1980s (Figure 3). It is suspected that movements across the boundary between the two stocks are common, and that it may be more accurate to assess them as a single stock. The data in Figure 4 suggest that the two stocks together are stable or increasing.

The data for eastern spinner dolphins show no significant changes in abundance over the period, reflecting stability in this stock (Figure 5). The pattern for whitebelly spinner dolphins is similar (Figure 6).

The National Marine Fisheries Service (NMFS) has estimated dolphin abundance, using data from research vessel cruises designed to search randomly in the areas where dolphins occur; the resulting estimates should be less biased than those based on data from tuna vessels. A comparison of trends in the NMFS estimates for 1986-1990 with those in the IATTC estimates leads to the same conclusion: stability.

Because of the low number of sets on common dolphins, estimates of relative abundance are poor and are therefore not discussed here. Research vessel cruises have not covered the range of common dolphins adequately, so reliable estimates are unavailable from that source.

Estimates of the rate at which dolphins are killed in the fishery and of the size of the population suggest that the abundance should increase during the next few years. Estimates based on research vessel data indicate an average abundance of about 95 million dolphins that are involved in the tuna fishery in the EPO. Net recruitment (the number of animals added to the population each year minus those that die of natural causes) to this population is estimated to be about 2 to 6 percent per year, or about about 190,000 to 570,000 dolphins. The 1991 estimate of mortality due to fishing is about 27,300 dolphins, or about one-seventh of the most conservative estimate of net recruitment.

The significant reductions in dolphin mortality have halted the declines in dolphin abundance observed during the early days of the fishery and have resulted in stability of the stocks, with a tendency for some to increase. These declines are attributable mostly to improved performance by fishing captains and crews, who have worked willingly with IATTC scientists and gear technicians to identify and eliminate fishing practices that lead to high dolphin mortality. The Commission's activities in this regard include (1) reviewing individual vessel trips, identifying problems leading to high mortalities, and meetings with individual captains to correct such problems; (2) workshops to review IATTC dolphin programs, national and international regulations and measures to protect dolphins, fishing procedures, and any other information and practices that can lead to reduced mortalities; (3) trial sets to ensure that dolphin safety panels are correctly installed and used; and (4) gear inspections to ensure that all dolphin safety gear is in good working order and used

properly. Such workshops, meetings, and gear inspections are conducted on a regular basis in major fishing ports throughout Latin America.

In short, the IATTC program has succeeded in achieving the objectives established by the nations of the region. Dolphin mortality has been reduced by 80 percent since the program became fully operational in 1986, the major stocks of dolphins involved in the fishery are neither threatened nor endangered, and the trends in their abundance reflect stability or growth. The Commission's programs to identify, develop, and disseminate the use of fishing technology and methods to reduce mortality are continuing, and the mortality to date in 1992 is down significantly.

Despite these accomplishments, there is still much that can be done; it is likely that incidental dolphin mortality in the fishery can be reduced to much lower levels, and perhaps eventually be eliminated.

One way of accomplishing this, a ban on the encirclement of tunas associated with dolphins, has been the subject of much discussion. If this approach could be implemented, it would of course resolve the problem of incidental dolphin mortality. However, a simple ban does not offer any alternative means for capturing large tuna that is as economically efficient as current purse-seine technology. The nature of the association between tunas and dolphins, both components of the same ecological complex, is such that it is not possible, with current fishing technology, to abandon fishing for tunas associated with dolphins without causing a substantial reduction in tuna catch, even without any reduction in fishing effort. This is because shifting fishing effort away from the larger tunas caught in association with dolphins would cause a sharp reduction in the yield per recruit.

Yellowfin tunas in the EPO grow rapidly, and the biomass of a year class is at its peak when the individuals in the class reach a size of about 60 pounds. Tunas caught in association with dolphins are near that size, and therefore this mode of fishing helps maximize production from the resource.

Not all the tunas from the EPO caught by purse-seine are caught in association with dolphins: some are caught in free-swimming schools ("school fishing") or in association with floating objects such as logs, tree trunks, and other natural and man-made debris ("log fishing"). These modes of fishing tend to catch small, sexually immature fish averaging about 10 pounds. Therefore, if fishing for tunas in association with dolphins is prohibited, and all fishing effort is shifted to school or log fishing, the average size of fish in the catch will drop precipitously and growth overfishing will result. Catches of yellowfin would decline by at least 25-30 percent, and perhaps by as much as 50 percent, because individuals would be removed from the population at a small size, when they would contribute less to the catch than they would if they were harvested at a larger size. It is not possible to predict the effect that catching fish before they have had a chance to spawn would have on the production of recruits to the fishery.

Because the relationship between parent stock size and recruits is not clearly understood for yellowfin tuna, it is impossible to predict the impact of increased catches of small, sexually immature fish on recruitment; however, prudence is advisable.

The tuna-dolphin problem in the EPO creates a conservation dilemma: if the dolphins are completely protected, the tunas will be overexploited. Banning the encirclement of dolphin-associated tunas without first developing other ways of capturing large tunas would be inconsistent with the concepts of "responsible fishing" as defined in the Declaration of Cancun, agreed to by more than 60 fishing nations in May 1992. It would also be inconsistent with the objective of sustainable development, defined in *Our Common Future*, a report published in 1987 by the World Commission on Environment and Development, as a commitment to sustaining both economic health and the resources of the natural world on which economic health and growth ultimately depend in a manner which meets the needs of the present without compromising our ability to meet those of the future.

Attempting to resolve the dolphin bycatch problem by prohibiting fishing on tuna associated with dolphins, without a viable alternative for catching large yellowfin tuna, may create another, and perhaps more serious, bycatch problem. It is almost certain that, if fishing on dolphins is prohibited, fishing effort would be directed mostly toward schools of tunas associated with logs or free-swimming schools. In both these modes of fishing there is a bycatch of small yellowfin and skipjack tuna, as well as other species of tunas and tuna-like fishes, all of no commercial value. Currently, about 20 to 30 percent of the total catch in weight taken by log fishing is discarded, mainly because there is no market demand for them. Most of these fish die in the net before they can be released, and mortalities of such vast numbers of fish could have a serious impact on the ecosystem.

An attempt to halt the fishing of tunas associated with dolphins was made in mid-1980, when U.S. tuna processors adopted their "dolphin-safe" policy and ceased pur-

chasing tuna from vessels which fished for dolphin-associated tunas. This action resulted in most of the vessels of the U.S. fleet leaving the EPO, because they could not fish profitably without fishing on dolphins, whereas most of the vessels of other nations continued to fish on dolphins. In fact, they increased their effort on dolphin-associated tunas, and as a result the proportion of the overall catch taken in association with dolphins did not change. The efficiency of the U.S. vessels that remained in the EPO and ceased fishing on dolphins decreased: their production fell by more than 10 percent, while non-U.S. vessels which continued to fish on dolphins increased their production by a substantial margin.

In reality, the exodus of most of the U.S. fleet from the EPO contributed only slightly to the reduction in dolphin mortality; most of the decline, as already noted, was a result of improved performance by captains and crews, as measured by the average number of dolphins killed per set (Figure 7).

With these factors and the realities of the fishery in the EPO in mind, all nations with vessels fishing for tunas in association with dolphins in the area reached an agreement to progressively reduce dolphin mortality in the fishery to levels approaching zero through the setting of annual mortality limits, with a goal of eliminating such mortality and seeking ecologically sound means of capturing large yellowfin tuna not in association with dolphins while maintaining the population of yellowfin tuna in the EPO at a level which will permit maximum sustainable catches year after year. The agreement, reached during the 50th Meeting of the IATTC and a concurrent intergovernmental Meeting in June 1992 (Appendices I and II), included the following schedule of reductions:

1993, 19,500; 1994, 15,500; 1995, 12,000; 1996, 9,000; 1997, 7,500; 1998, 6,500; 1999, <5,000.

To ensure that these overall limits would not be exceeded, it was further agreed to partition them among the international fleet of qualified vessels in the form of non-transferable individual vessel limits. A qualified vessel is any vessel of carrying capacity greater than 400 tons flying the flag of a nation party to the agreement which will fish for tunas in association with dolphins in the EPO.

As a precautionary measure, provision is made in the agreement for the protection of each individual stock of dolphins in the event that the incidental mortality of any one stock exceeds a predetermined proportion of the absolute abundance of that stock. These measures contemplate sets on such stocks for periods of up to five years.

Also part of the agreement was the establishment of an International Review Panel. The duties of the Panel, whose nine members would be selected from participating governments, environmental organizations, and the tuna industry, would be to review and report on infractions by the international fleet of the terms of the agreement so as to ensure compliance with the mortality limits. It would also be responsible for recommending to the participating governments further measures to ensure the success of the conservation program, including standardization of penalties for infractions.

This international dolphin conservation program, which was agreed to by 13 nations, is scheduled to begin on January 1, 1993. It represents one of the most comprehensive and significant international conservation programs in the history of international high-seas fisheries, and some of its features, such as individual vessel limits and the Review Panel, set new precedents in an international fishery. The agreement, which can serve as a model for resolving other complex international fisheries problems in the future, will ensure that by the end of 1999 the incidental dolphin mortality will be reduced to less than 5,000 animals. This level of mortality is less than five one-hundredths of one percent of the total populations of all dolphins involved in the fishery, or less than three-tenths of one percent of the most conservative estimate of net annual recruitment of these populations.

To help achieve this goal of reducing incidental mortality to less than 5,000 animals by the end of 1999 and the additional goals of eliminating dolphin mortality while seeking alternative ways of capturing large tuna, a major research program was approved by the member governments of the IATTC and a number of other participating governments.

One avenue of research will concentrate on modifying current purse-seine technology to make it as efficient as possible in reducing mortality. Efforts will focus on net designs and modifications that would prevent the net from collapsing and from forming canopies, two major causes of dolphin mortality, during the critical stage of the fishing maneuver. If the problem of net collapses and canopies can be solved, the mortality would certainly be reduced to a small fraction of its present level, and would for all practical purposes be eliminated. Initially, two possibilities will be considered. The first involves incorporating a panel constructed of belts into the net, between the corkline and the webbing, through which dolphins could escape

without becoming entangled. Testing the feasibility of this concept will require the construction of at least two prototype nets.

Another research project, suggested in the report on reducing mortality from tuna fishing published by the U.S. National Academy of Sciences, involves fitting annular lifting surfaces, or "kites," on the exterior wall of the net to prevent net collapse during fishing operations.

Three other research projects which could contribute to reducing dolphin mortality and which were approved are: (1) development of a current profiler for detecting strong subsurface currents, which often result in high dolphin mortality during a set; (2) development of an efficient dolphin rescue craft for use before and during backdown to separate dolphins from tunas and herd them toward the apex of the backdown channel; and (3) purchase of a remote-controlled underwater camera system for recording and evaluating the operation of both current and newly-developed equipment.

Crucial to the success of any research efforts to improve the performance of purse-seine gear in reducing dolphin mortality is proper design and planning. Modifying purse-seine gear is an engineering problem, and should be addressed by a team of engineers, supported by fishermen and experts in animal behavior. The members of the team will hold a meeting at a tuna-fishing port, from which they will go to sea aboard tuna vessels and be presented with general guidelines by scientists and fishermen, and subsequently develop their own ideas. The team will investigate the advantages of various options and develop a research proposal for improving purse-seine gear with respect to reducing dolphin mortality.

The second avenue of research aims to develop alternatives to setting on dolphins for capturing large tunas. The emphasis is on large tunas because, as noted above, if fishing effort is directed toward fishing on floating objects, as currently practiced, the yield of yellowfin will drop by about 30 to 50 percent. Most of the fish caught will be small, and will therefore produce a much lower yield per recruit than large fish. Also, many of the fish caught in association with floating objects are too small to be of economic value, and a high percentage of the tunas caught in this way are returned to the water dead. This is not only a large economic waste, but could also have a serious effect on the ecosystem.

Two possible alternatives to setting on dolphins merit immediate investigation. The first involves attracting large tunas to artificial floating objects, known as Fish-Aggregating Devices, or FADs. The IATTC and NMFS are currently involved in a modest program, funded by Bumble Bee Seafoods, Inc., to test the feasibility of this approach. As part of the project, 30 FADs have been or will be deployed in each of two areas of the fishery where the probability of encountering large fish with natural logs is highest. Half of these have already been deployed: in the first part of the program, put into operation in 1991, 30 FADs, of various designs and fitted with tracking and locating devices, were deployed along 10°N at about 120°W from a vessel provided by the Mexican Navy. The second part of the program, in which FADs will be deployed in the EFO south of the equator, has been delayed due to the anomalous ocean conditions generated by the current El Nino. Based on the success of this feasibility study, an expanded program to build and deploy an additional 200 FADs over a 2-year period has been approved. The costs for such a program are high, amounting to some 4 million dollars; fully three-quarters of this amount is for the charter of a vessel to deploy, tend, and fish around the FADs.

The second general approach to capturing large tunas without dolphins relies on breaking the bond between the two species before the net is set around the tunas, or setting on the tunas when they separate naturally from the dolphins, which may occur at night. In order to study the degree of association between tunas and dolphins at night, tunas and dolphins from a single aggregation will be tagged with sonic devices and radio devices, respectively. The tagged animals will be tracked in order to determine whether the two groups separate at night; if they do, it may be possible to catch the tunas at that time without capturing the dolphins. Such an experiment will require at least two vessels for simultaneous tracking.

The reasons for the association between tunas and dolphins are not understood, although it has often been suggested that it may be food-based. If attempts to break this bond in order to catch tunas without capturing dolphins are to succeed, an understanding of how and why the two groups associate would be helpful. A study of the food habits of tunas and dolphins as planned, in order to elucidate the trophic relationship between the two groups and with other upper-level predators in the EPO. This project entails analyzing the stomach contents of tunas and dolphins collected from throughout the EPO over a period of several months in order to study diet overlap and resource partitioning, as well as stable carbon and nitrogen isotope constituents in muscle tissue, to determine the long-term trophic interrelationships of the species.

An additional area of research which bears on the development of alternative fishing gear is the identification of oceanographic characteristics associated with the occurrence of large tunas not associated with dolphins. If such characteristics can be identified and quantified, this may lead to the location of concentrations of large fish than can be captured without encircling dolphins.

A budget of 4.57 million dollars for the 2-year research program outlined above was approved by the IATTC at its meeting in June 1992, and it is hoped that the funding will be forthcoming so that this important research can be carried out. Some funding has already become available from the U.S. Department of State, Bumble Bee Seafoods, Inc., ANCIT (an organization of Italian tuna processors), and the NMFS, with whom IATTC scientists are collaborating on several of these programs.

This research program is broad and comprehensive, and will most likely be effective in the short term in improving the efficiency of current purse-seine fishing techniques for releasing captured dolphins. However, the problems involved in research into alternatives to setting on dolphins are much more complex, and the probability of success lower. The 2-year program approved by the Commission is a good start at looking for alternatives to encircling dolphins, but a broader and more substantial effort will most likely be required, including a significant amount of basic scientific research into the biology and behavior of dolphins and their association with tuna. Such a program is beyond the scope of a single research organization such as the IATTC or the NMFS. The IATTC can carry out a significant share of the necessary research, but a coordinated effort among research institutions from a number of organizations and nations will be required if we are to succeed in our efforts to find a viable alternative. The Commission has served as a focal point for such research, and can continue to do so.

Recognizing the magnitude of the research effort required, the IATTC, as noted above, agreed to establish a Scientific Advisory Panel of technical specialists to assist the Director in his efforts to coordinate, facilitate, and guide research to find alternative ways of capturing large yellowfin tuna and to modify current purse-seine technology to make it less likely to cause dolphin mortality.

In summary, and in reply to Senator Hollings' request in his invitation to me to present testimony at this hearing, I would like to review my comments in the light of the two legislative approaches to the tuna-dolphin problem, namely (1) a global moratorium on harvesting tuna with purse-seine nets deployed on dolphins, and (2) the IATTC program to reduce dolphin mortality progressively in the tuna fishery of the EPO.

The most fundamental difference between these two approaches has to do with biology and our knowledge of tunas and dolphins.

If a moratorium is effective in putting an end to the capture of dolphins in purse-seine nets, production of yellowfin tuna from the EPO will fall by about 25 to 30 percent as a result of shifting from the capture of large fish associated with dolphins to small, sexually immature fish. Production may go down an additional 20 percent because of a change in the area of the fishery to the more inshore regions where most non-dolphin fishing occurs. This shift inshore will also cause problems with access to the resource, since most fish not associated with dolphins are taken inside national Exclusive Economic Zones, which may well lead to tension in political and diplomatic relations among nations.

A shift of fishing effort from dolphin fishing to school and log fishing will lead to much greater bycatches of small tunas and other species of little or no economic value, which are returned to the sea dead. The information available is insufficient to quantify the effects of this, but it stands to reason that it will affect the balance of the ecosystem.

However, if the IATTC approach is implemented, the fishery for yellowfin tuna will continue to yield high catches while sustaining the populations near optimum levels of abundance. Fishing on dolphins also results in the lowest incidence of bycatch of other species of fish, and the incidental mortality of dolphins, already reduced by 80 percent since 1986, will be reduced by a further 80 percent between 1991 and 1999.

Even though the dolphin populations involved in the tuna fishery are neither threatened nor endangered, thirteen nations, including all those with purse-seine fleets fishing for tunas in association with dolphins in the EPO, have already agreed to an international program to reduce dolphin mortality to biologically negligible levels, with a goal of eliminating such mortality entirely. These nations stand ready to put this program into effect at the beginning of 1993. The program is unique in many respects, particularly in that it established individual vessel limits in an international fishery, and a Review Panel to ensure that the provisions of the agreement are complied with and that equitable and meaningful penalties are applied for

violations. The program will provide an excellent model for use in other fisheries where similar problems exist.

Conversely, a moratorium reflects the goals of only one nation, and there is no guarantee that any other nations will subscribe to it. Whether such an approach will succeed will depend largely on the success of research efforts to find an alternative mode of fishing. If an alternative is found which is as efficient as current methods, then setting nets around dolphins could be eliminated without major biological, economic, or political repercussions. However, if no alternative is found, the effectiveness of the moratorium will depend on its biological, economic, and political costs, and, in my opinion, these costs will be so great as to preclude the enactment of an effective moratorium on setting on dolphins.

Both these legislative approaches seek to eliminate dolphin mortality due to fishing; however, the rates at which they propose to achieve this goal differ. The moratorium seeks to do it in approximately one year, regardless of the biological, economic, or political cost; the other program seeks to reduce mortality progressively to levels approaching zero, while allowing time for research to find alternatives to setting on dolphins.

Finally, the international agreement to progressively reduce dolphin mortality in the EPO is consistent with the mandate of Congress, as expressed in the Marine Mammal Protection Act and elsewhere, and is also consistent with the concept of sustainable development. The moratorium, on the other hand, seeks to provide total protection to one species that is neither threatened nor endangered, while encouraging the waste of many millions of individuals of other species in the ecosystem.

In conclusion, my role is that of a scientist and administrator responsible for supplying factual evidence based on scientific research to those with the responsibility for the stewardship of our natural resources. Your committee has that responsibility, and I hope that I have provided you with the information necessary to exercise it, not just for a single group of species but for the ecosystem as a whole.

Table 1.—Percentage of Trips by Vessels of Capacity Greater Than 400 Tons Fishing in the Eastern Pacific Ocean Covered by IATTC Observers, by Flag, 1986-92¹

Flag	1986	1987	1988	1989	1990	1991	1992 ²
Colombia				0.0	22.2	100.0	
Costa Rica	25.0	100.0		0.0			
Cyprus						0.0	0.0
Ecuador ³	6.9	9.5	35.9	34.6	48.3	100.0	100.0
El Salvador	0.0	40.0	33.3	0.0			
Honduras					66.7	33.3	
Korea			0.0	0.0			
Mexico ⁴	⁵ 28.1	26.8	38.4	35.4	37.6	36.4	36.8
Panama	42.9	13.3	30.0	43.5	47.6	100.0	100.0
Peru					0.0	0.0	
Spain						0.0	0.0
U.S.A. ⁵	19.0	31.2	26.6	35.9	46.7	38.0	38.5
Vanuatu	33.3	31.0	30.0	35.2	52.2	93.3	100.0
Venezuela	21.7	21.8	31.3	35.4	35.8	57.1	100.0
Undocumented			0.0	0.0			

¹ Trips that depart and arrive in different years are counted in both years.

² As of July 12, 1992; departures only.

³ Includes one Spanish vessel (all years) and one Cypriot vessel (1992 only) operated by an Ecuadorian company.

⁴ National observer program also samples fleet (1992 only).

⁵ First year in program—includes only trips that departed in 1986.

⁶ National observer program also samples fleet (all years).

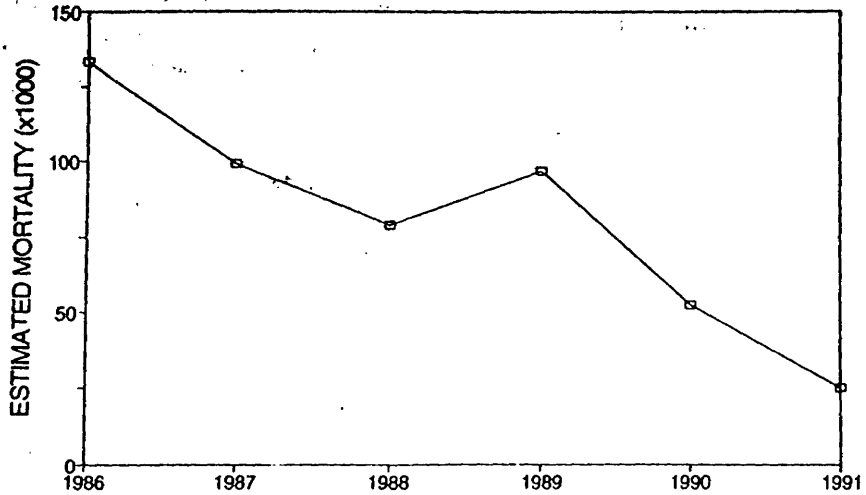


FIGURE 1.—Total estimated dolphin mortality, 1986–91.

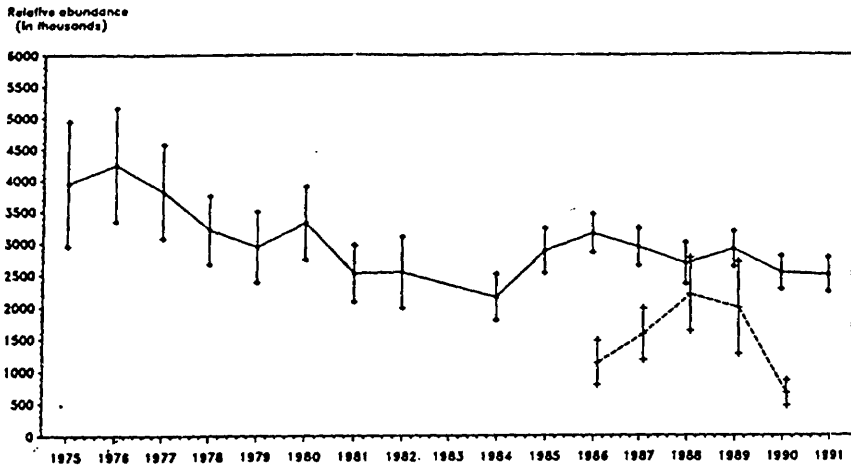


FIGURE 2.—Estimates of relative abundance for the northern stock of the offshore spotted dolphin, derived from tuna vessel (solid line) and research vessel (dotted line) data. The vertical bars indicate the standard error of the estimates.

Relative abundance
(in thousands)

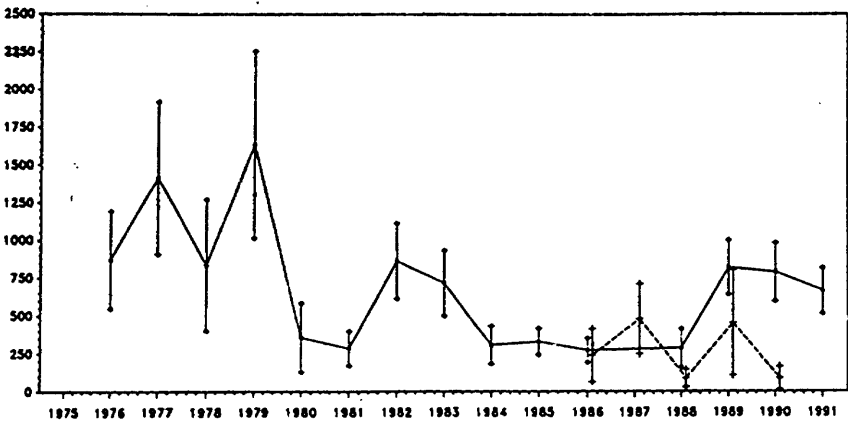


FIGURE 3.—Estimates of relative abundance for the southern stock of the offshore spotted dolphin, derived from tuna vessel (solid line) and research vessel (dotted line) data. The vertical bars indicate the standard error of the estimates.

Relative abundance
(in thousands)

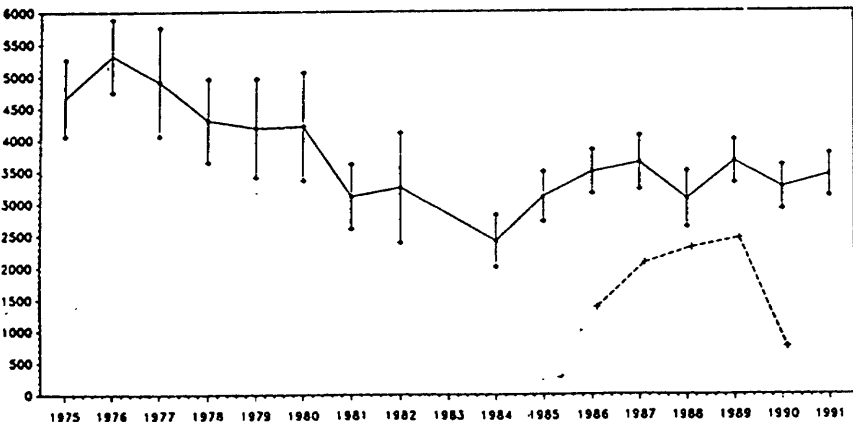


FIGURE 4.—Estimates of relative abundance for the northern and southern stocks combined of the offshore spotted dolphin, derived from tuna vessel (solid line) and research vessel (dotted line) data. The vertical bars indicate the standard error of the estimates; standard errors are not available for research vessel estimates.

Relative abundance
(in thousands)

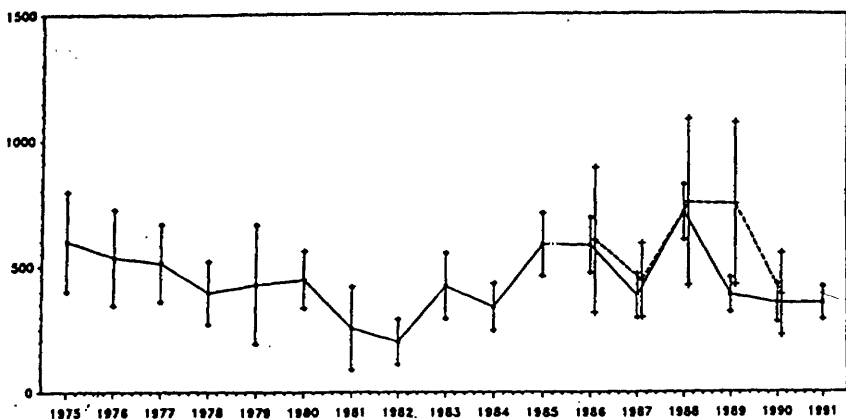


FIGURE 5.—Estimates of relative abundance for the eastern stock of the spinner dolphin, derived from tuna vessel (solid line) and research vessel (dotted line) data. The vertical bars indicate the standard error of the estimates.

Relative abundance
(in thousands)

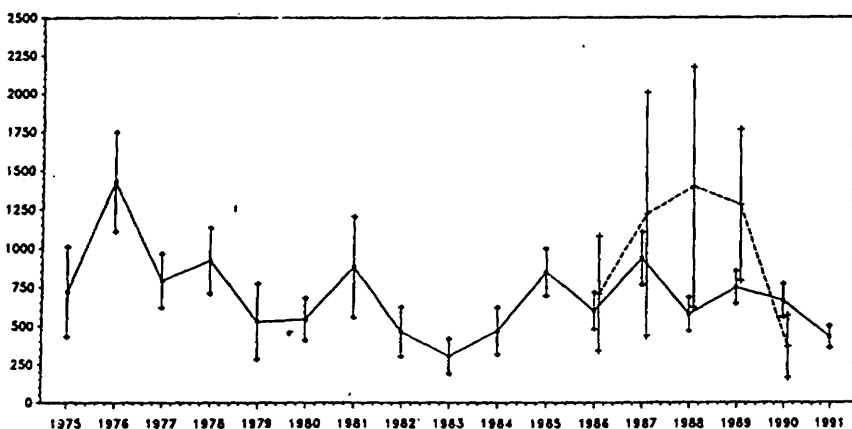


FIGURE 6.—Estimates of relative abundance for the whitebelly stock of the spinner dolphin, derived from tuna vessel (solid line) and research vessel (dotted line) data. The vertical bars indicate the standard error of the estimates.

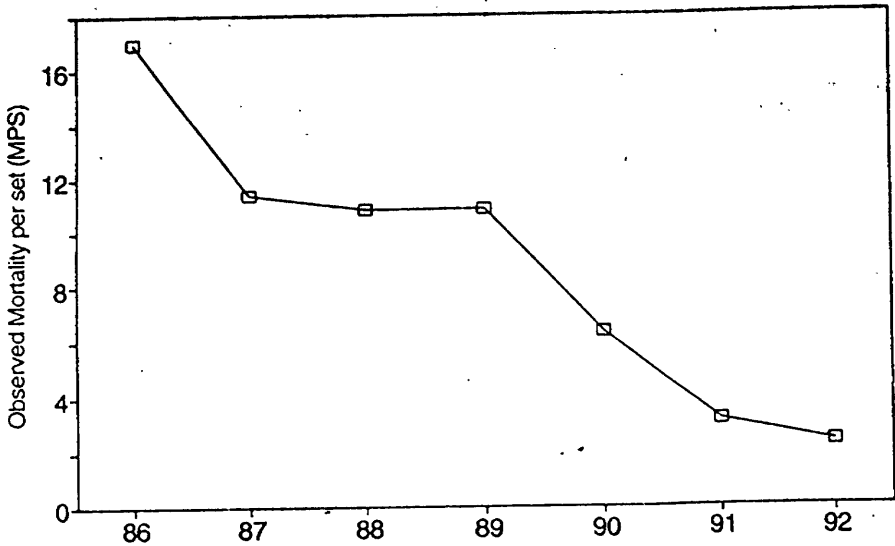


FIGURE 7.—Observed dolphin mortality per set, 1986–92, for the non-U.S. fleet. Data for 1992 are preliminary.

Senator BREAUX. Well, I think there should be more of you and less of us. I thank the whole panel for their presentations.

Let me ask you, Dr. Joseph, what is the scientific condition of dolphins? Are they threatened or endangered?

Dr. JOSEPH. No. None of the dolphin stocks that we are aware of is threatened or endangered. There are, as I said, about 9.5 million dolphins in the Eastern Pacific Ocean that are involved in this fishery, and most of the stocks have been stable since 1980 or have been increasing.

In the testimony, and I would ask that I have some written testimony—

Senator BREAUX. It will be entered.

Dr. JOSEPH [continuing]. Because there are some figures in there that show these estimates. One thing I should add, Mr. Chairman, while we are talking about dolphins, that dolphin mortality due to fishing is not going to be eliminated entirely. Even if there is a moratorium on dolphin fishing, and even if every government agrees not to set on dolphins intentionally and their boats do not, there are still going to be dolphins caught in log fishing and school fishing. If all of the effort goes to log fishing, something in the order of several hundred dolphins will be taken in that fishery, too.

Mr. PHILLIPS. Could I comment on that, too?

Senator BREAUX. I will get to you. Let me ask—finish following up on the IATTC program. What was the position of the United States at the June meeting when the agreement was concluded with the various nations on the multilateral approach?

Dr. JOSEPH. Well, I am not confident that I understand this fully. I think you could get a better answer from the United States, but it is part of the agreement.

Senator BREUX. Do you have an opinion as to the viability of a regulatory program that is like the legislation that I think Senator Kerry has introduced, if other nations do not agree to it and decide not to follow it?

Dr. JOSEPH. Well, if the other nations do not follow it, then the program does not mean much. The question is, will be other nations agree to a moratorium? I have always had the opinion, Mr. Chairman, that when you force things on people, it is more difficult to get the desired results than when they do it through their own volition.

I would favor, without a doubt, a program in which nations agree to certain objectives over a program in which nations are forced to do things. And, as I say in my testimony, it appears to me that we have 12 nations that have agreed to a precedent-setting program to reduce dolphin mortality with a goal of eliminating it on the one hand, and on the other hand we have national legislation that will impose its will on the rest of the world with respect to that.

Senator BREUX. The National Resource Council, which is an arm of the National Academy of Science, and their publication, Dolphins and the Tuna Industry, in their summary recommendation said, in summary, the committee recommends that two major international efforts be undertaken to reduce the mortality of dolphins in the Eastern Tropical Pacific tuna fisheries.

Once again, we emphasize the word "international," since most of the Eastern Tropical Pacific dolphin mortality occurs in non-U.S. fisheries.

The first recommendation is to develop an educational monitoring and incentives program for tuna vessel captains aimed at reducing the dolphin mortality from the relatively small number of captains that account for a large proportion of the kill. The second recommendation is to develop a major international program for gear and behavior research, aimed at reducing dolphin mortality.

Do you feel that the international Inter-American Tropical Tuna Commission's June agreement meets those recommendations?

Dr. JOSEPH. Yes, I do, Mr. Chairman. I think it meets them very closely. The academy report is very similar in its recommendations to the actual program that the Commission has had underway for the last several years and the program that the Commission is seeking to undertake now.

The conclusions of the academy report are very close to many of the conclusions of the scientific staff of the IATTC. And particularly, one of the things that the academy report says and which and we in the Commission believe, is that there is not a readily available, economically efficient alternative to fishing on dolphins at the present time. And it is my own opinion, Mr. Chairman, that there is not much of a chance that by March 1994, we are going to have an alternative to fishing on dolphins.

The Commission has underway now a modest program looking at alternatives. One of the things that we are looking at is the development of FAD's, fish-aggregating devices, that capitalize on the propensity of tunas to associate with floating objects to attract large tuna away from dolphins.

This program has been underway for about a year and a half, and another phase of it will be initiated soon. The idea is to build

specialized floating devices with various subsurface arrays to attempt to attract large tuna. We do not know whether that will be successful. The program so far is basically a feasibility study. We intend, in the new budget of \$4.5 million, to go ahead with a 2-year program to give it an all-out try. I am hopeful that that program is going to lead us to a partial solution to the problem, but I am not optimistic that anything is going to happen for a couple of years.

Senator BREAU. Do the 12 nations that signed our agreement approve of that type of research and approach?

Dr. JOSEPH. Yes, all of them concur with that type of research. In fact, some of the nations and some groups have already contributed money, not through regular budgetary channels but just contributions.

The United States, for example, provided us with \$250,000 to be used on phases of research that do not involve encircling dolphins. The tuna industry has provided some money. The Italian tuna canners have committed to \$400,000 for research, and we have already received \$200,000 from them.

Bumblebee Seafood has funded the modest FAD research project that we have underway. The Government of Venezuela has committed \$500,000, not part of its normal contribution to the IATTC budget, to do these things.

So, there is enthusiasm and there are commitments to the research that we hope to undertake. I might add, Mr. Chairman, that this is a major research undertaking. It involves expertise from a lot of areas and a lot of disciplines. It is more than the IATTC can accomplish by itself. We need to pool and coordinate the efforts of the international community. The IATTC is given the authority to set up a technical advisory board of international experts to advise me, the Director of the IATTC, in facilitating research in this effort.

Senator BREAU. Let me ask you a question. What happens to all that good work that you have described if the United States takes the position of acting unilaterally with domestic legislation instituting an embargo in 1994?

Dr. JOSEPH. Well, it all depends, Mr. Chairman, on whether it gets other nations to cooperate in the moratorium. My own personal feeling is that it is going to be difficult to get the cooperation of many nations in a moratorium. There are going to be people who will figure that they can market their own fish without the U.S. markets, and they will pursue their own interests in catching fish with dolphins.

The United States does not completely control the international tuna market, although it is still a major participant. We still consume something like 36 percent of the world catch of tuna, which is about 3 million pounds, but markets elsewhere are growing. There are 500 million people in Latin America. In just a matter of a few years, Mexico has gone from 25,000 to 98,000 tons of consumption annually.

Venezuela, likewise, has developed large internal markets, and so are other countries. Mr. Phillips has said, and correctly, that largely through their efforts, there is resistance in Europe to Eastern Pacific fish. Spain has recently decided to not purchase fish

from the Eastern Pacific, but the reasons for that are purely economic. They have to do with the reduction in price of tuna that they think is caused by the dumping of tuna that is caught with dolphins.

The European Economic Community has, as was stated today, passed some sort of policy statement prohibiting its boats from setting on marine mammals globally. But it does not mean a whole lot, because there is no way to enforce it. It considers that the only area where tuna is caught in association with dolphins is the Eastern Pacific, so passing such a law will not affect them.

At the same time, the EEC has sought review by a dispute settlement panel, with respect to embargoes against their members by the United States. So there is some inconsistency there.

Senator BREAU. Thank you. Mr. Atchison, let us talk about your testimony. How many vessels—you said that you have operating in ETP, seven?

Mr. ATCHISON. Seven.

Senator BREAU. How many non-U.S. vessels are operating in ETP that fish on dolphins?

Mr. ATCHISON. Approximately 100. I am sorry, that are not fishing on dolphins?

Senator BREAU. No, that are.

Mr. ATCHISON. That are. At the present time, about 100.

Senator BREAU. So, if we act unilaterally and other countries say, take a hike, we are going our own route. You could conceivably affect the seven U.S. vessels that would be prohibited by domestic law from fishing on dolphin in the Eastern Tropical Pacific, but if the other countries said, we do not agree, we agree with Dr. Joseph's IATTC approach, they would be able to continue operating and fishing on dolphin if they just made a decision not to export their products?

Mr. ATCHISON. Absolutely, yes.

Senator BREAU. Does the association that you represent support the policy that Dr. Joseph outlined under the IATTC?

Mr. ATCHISON. Oh, yes, absolutely. The American Tunaboat Association supports all of the work that IATTC has done and especially the agreement of nations that was reached last June.

Senator BREAU. OK, I thank you. Mr. Phillips, take your best shot.

Mr. PHILLIPS. Well, I wanted to make a couple of quick points. One, regarding the status of scientific populations, the record should note that the National Marine Fisheries Service has recently put forward two of the main dolphin species as depleted, based on the 5-year trends and abundance survey. It should be of interest to committee members that back in 1979, when the Government looked at those populations and then was taken to court by the tuna industry which revised the populations upward, the NMFS estimate of northern offshore spotted was 3.1 million, which was raised by the ALJ up to 6.115 million. As a result of this estimate the depletion status was not done. And the current information suggests that the population is about one-half of what the National Marine Fisheries Service estimate was, or about one-sixth of what the ALJ hearing accepted.

So, there is no question that the two species, the eastern spinner and the northern offshore spotted, are depleted under the requirements of the Marine Mammal Protection Act.

I think it is important to understand and reiterate again that the IATTC plan is a done deal. Those countries have already stated their intention to comply with the IATTC plan. We do not need legislation in order for that to happen.

The other point to keep in mind is, of the 12 countries in the IATTC, more than 95 percent of the fishing activity is done by four nations. The total list of IATTC countries includes nations like Japan and France that do not operate in the ETP; it includes some nations like Panama and Ecuador that have prohibited their fleets from setting nets on dolphins.

This dolphin-unsafe fishery boils down to four nations; the United States, Mexico, Venezuela, and Vanuatu. The fleets from those countries represent more than 95 percent of the boats that operate setting nets on dolphins in the ETP.

So that when we talk about the need for an international agreement, the accord that we have put forward is in fact an international agreement. Insofar as Mexico, Venezuela, and the United States agree on a plan for a moratorium, that is going to affect the operations of more than 90 percent of the vessels in the fleet.

The Venezuelans, in their letter, stated that they would be willing to engage in the moratorium so long as the United States and Mexico agreed to join it. If, in fact, they renege on that, no one has explained to me how, all of a sudden, they are going to become a renegade fleet. They are still committed to comply with the IATTC agreement. That is not predicated by U.S. legislation. It is based on their own efforts to try to show that they are responsive to the international concerns to end the killing of dolphins.

The United States is not forcing them into the IATTC agreement. The IATTC agreement is a midcourse step to try to avoid the moratorium.

Senator BREAU. Dr. Joseph, any comments on that?

Dr. JOSEPH. Yes, I have a couple of things to say, Mr. Chairman. One thing I would like to comment on the term "depleted." I think people should understand the differences between "depleted," "endangered," and "threatened." Those are different concepts.

I think everybody knows what "endangered" means. You could drive the population to extinction. There is no way, in my opinion, or in the opinion of any other scientist that I have talked to, that any of those populations is threatened or endangered.

Depleted is another thing. "Depleted" is a term, a definition laid out in the Marine Mammal Protection Act. And what it means—I wish I had a blackboard—is that most animal populations follow a type of a growth curve. And there are variations on that growth curve, but there is some point when the population turnover is at a maximum.

The objective in management for most fisheries is to maintain the population at the point of maximum turnover. "Depleted," as defined in the Marine Mammal Protection Act, is if that population becomes even slightly less than what is considered to be the optimum population size. It in no way implies that the population is

endangered. It is a legal definition in the Marine Mammal Protection Act.

Indeed, Mr. Phillips is right, because there is a move to declare the northern offshore spotted dolphin and the eastern spinner dolphin as depleted.

With respect to the countries that have gone dolphin-safe, I just think for the record we should understand, in the case of Panama and Ecuador, two countries that have gone dolphin-safe, what we are talking about. Panama, I think, has two boats. The Panamanian flag is a flag of convenience, so it has not cost Panama anything to go dolphin-safe.

Ecuador has never fished on tunas associated with dolphins very much. The Ecuadorian fishery is primarily a skipjack fishery. It has some large boats, but these catch mostly skipjack and free-schooling fish, and so to give up—and I am not taking away from the Government of Ecuador, what they have done, but for it to give up dolphin fishing has not been a big cost.

There are 100 boats fishing dolphins in the Eastern Pacific Ocean, but there are 600 boats worldwide capable of fishing dolphins in the Eastern Pacific. If we do something with those 100 boats, there is a high probability that somebody is going to come in and replace them.

Senator BREAUX. Well, gentlemen, I thank you for your patience in being with us. I appreciate your testimony. And that will conclude our witnesses today.

The committee will stand adjourned.

[Whereupon, at 11:36 a.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF MR. LOWERY

Mr. Chairman, members of the Committee, I appreciate the opportunity to testify before the Committee in support of Senator Breaux's bill, S. 1898 and in opposition to H.R. 5419, the International Dolphin Conservation Act of 1992.

When Congress reauthorized the Marine Mammal Protection Act of 1972 (MMPA) on November 23, 1988, it stipulated several amendments to the act. One of these amendments was a Congressionally mandated report by the National Academy of Science (NAS). This study was to be used by the Secretary of Commerce as a basis for proposing a plan for research, development, and implementation of alternative yellowfin tuna fishing techniques.

The exhaustive NAS study concluded that there were in excess of 8,000,000 dolphin in the Eastern Tropical Pacific (ETP) alone, and that the best way for the United States to address the tuna-dolphin issue was to work cooperatively with the other fishing Nations of the region to reduce the incidental take of dolphins. The report emphasized the need for international cooperation and participation in an extensive research program to improve the existing dolphin release technology, while investigating alternative methods for catching the larger yellowfin tuna of the area without encircling dolphins.

Congress asked for and funded this scientifically based study—and now Congress is completely disregarding its conclusions and recommendations. Further, Congress is making a mockery of a 43-year-old international scientific body, the Inter-American Tropical Tuna Commission (IATTC). H.R. 5419, the International Dolphin Conservation Act of 1992, is merely a political response to a serious international and environmental dilemma. Implementation of the measure would be unhelpful and inadequate.

No one involved in this issue advocates the killing of dolphins, especially not the fishermen whose livelihoods depend on the delicate ecosystems in the oceans. In fact, over the past two decades, the tuna fishermen themselves have instituted or suggested changes in their tuna-seining process with tremendous success.

For the years between 1959 and 1973, dolphin mortality estimates range from 350,000 to 653,751 kills per year. Since 1981, the MMPA has permitted up to 20,500 dolphins to be killed annually. In 1991, U.S. dolphin mortality was 1,005 animals. Let's look at that figure. Under Congressional legislation, the U.S. tuna fishermen have been told to keep dolphin mortality in the ETP—where approximately one quarter of the world's tuna catch is taken—to under 20,500 per year. Our tuna fishermen have responded tremendously by dropping mortality to 1,005 last year. But H.R. 5419 doesn't take this into consideration.

In June, 1992, twelve nations which account for 99 percent of the tuna catch in the eastern Pacific Ocean, formally ratified an agreement to cut the killing of dolphins by 80 percent during the 1990's, building on an earlier 80 percent drop in dolphin kills achieved from 1986 to 1991. The agreement, negotiated by the IATTC, marked the first major international accord to save dolphins and set in motion a program to reduce dolphin mortality to insignificant levels—to levels approaching zero. The resolution also called for over \$4 million—one million dollars of which Mexico pledged and \$500,000 dollars Venezuela pledged—to be spent on scientific research projects to help tuna boats catch tuna without killing dolphins. But H.R. 5149 doesn't take any of this into consideration. In fact, H.R. 5149 fails to even acknowledge this truly multilateral commitment and continual requests for a hearing on the IATTC agreement prior to further legislative action have been ignored.

Dolphins are neither endangered animals nor threatened under the Endangered Species Act. H.R. 5419 does not take this into consideration.

The approach of a global moratorium on any tuna purse-seine fishing is extremely unfair to U.S. fishermen. The Bush Administration has said that other countries would set up similar prohibitions. However, the major fleets in the ETP (Vanuatu, Venezuela and Mexico) have made clear that they would not impose any such prohi-

bitions against their fleets. The unilateral action of H.R. 5149 would likely force 19 of the current 50 U.S. tuna boats into bankruptcy or into the hands of foreign owners. The U.S. tuna industry could lose as many as 500 jobs. But H.R. 5149 does not take this into consideration.

Frankly, U.S. tuna fishermen deserve praise for the incredible progress they have made—not bankruptcy. The perverse downside of H.R. 5149 is that it would drive U.S. tuna boats into foreign ownership and outside the regulation of U.S. laws. In other words, H.R. 5149 will ultimately result in more dolphins being killed, not less.

Both the IATTC and even Greenpeace have expressed grave concerns over the lack of international support for this legislation.

Greenpeace wrote, "We believe enforcement mechanisms applied by one country in isolation and in the form of blanket punitive sanctions of all fish products are not sufficient means of ensuring international control and enforcement and do not provide the incentives needed for transitions to environmentally sound fishing." H.R. 5149 does not take any of this into consideration.

Promising new techniques for finding and catching yellowfin tuna without killing any dolphins in the ETP are elusive, may be costly to develop and may require considerable investments in new vessels and equipment. H.R. 5149 does not take this into consideration.

There is an alternative. Senator John Breaux's legislative approach endorses the IATTC resolution and incorporates the recommendations of the Congressionally mandated NAS report. Senator Breaux's legislative approach would be supported by all the major fishing nations operating in the region and would establish a seven-year program of decreasing dolphin mortality which would fully satisfy the MMPA target of a level approaching zero. The Breaux bill would allow the U.S. tuna fishermen to continue their operations in compliance with a multilateral dolphin protection program.

The Breaux bill takes an international approach to an international problem. It is based on scientific research. It ratifies the global effort towards dolphin conservation, and it is not politically motivated.

I urge the Committee to support the Breaux legislation and to defeat H.R. 5149. The former is sound environmental policy, the latter is not.

Again, Mr. Chairman, thank you for the opportunity to testify today.

PREPARED STATEMENT OF SENATOR LAUTENBERG

Mr. Chairman, I am pleased to present written testimony in support of S. 1898 the Marine Mammal Health Stranding Response Act. This bill would amend the Marine Mammal Protection Act of 1972 by adding a new title III, to establish a program for responding to unusual mortality events and to provide guidance and quality control for marine mammal tissue banking and analysis.

I introduced the S. 1898 because in 1987 and 1988 New Jersey witnessed a series die-offs and strandings of Bottlenose dolphin on its shores. The sight of dead and sick marine mammals on New Jersey's shores was heart wrenching. The question remains, why did these beautiful creatures die and will this mysterious affliction threaten other marine life and even beachgoers? Studies of the marine mammals tissue showed high levels of toxic contaminants. These contaminants may have played a role in weakening the immune systems of these marine mammals and made them susceptible to illness which led to their stranding. Unfortunately, Mr. Chairman, no conclusions could be drawn from these studies because we did not have an adequate baseline to compare to contaminant levels found in the tissues of these stranded marine mammals.

S. 1898 would address this problem by establishing a marine mammal tissue bank. While always tragic, strandings and unusual mortality events can be used as learning tools to diagnose the health of marine mammal populations. If the marine mammal is still alive or freshly dead, tissues can be collected for analysis, which may lead to a diagnosis of why the marine mammal was initially in trouble. It is not enough however, to just ensure tissues are collected. Since the start of the stranding networks, tissues have been collected by network participants using various methods of collection, preparation, storage and examination. S. 1898 will require NOAA to issue recommended guidelines for collection, preparation and tissue analysis. These guidelines will help ensure that data from one stranding event can be compared to data from another event, and all these can be referenced to standard samples taken from healthy marine mammals.

Unfortunately, the 1987-88 Atlantic Bottlenose dolphin die-off and the Exxon Valdez spill of 1989 showed that responses to unexpected events affecting marine mammals have been mismanaged and uncoordinated. S.1898 calls for a more effective

tive response to unusual mortality events. It will accomplish this by having the secretary of Commerce establish a scientific working group that will: 1) determine when an unusual mortality event is occurring; 2) determine the point at which an unusual mortality event is concluded; 3) develop a contingency plan which allows for a coordinated response to an event; and 4) identify individuals or organizations that can assist the Secretary in a coordinated and effective response. Contingency plans will coordinate efforts to employ scarce resources in a manner that maximizes the chances for identifying causes of unusual mortality events and improve efforts to save stranded animals.

Mr. Chairman, I believe S. 1898 will strengthen efforts to protect the health of the world's magnificent marine mammals.

This bill has received the support of the Administration and the environmental community. I urge the Committee to move expeditiously to approve this legislation.

PREPARED STATEMENT OF NINA M. YOUNG, MARINE MAMMALOGIST, CENTER FOR MARINE CONSERVATION

The Center for Marine Conservation appreciates the opportunity to submit the following statement on S. 1898, the Marine Mammal Health and Stranding Response Act for the record.

We appreciate that your committee has decided to take testimony regarding S. 1898. As you know, we are on record in strong support of H.R. 3486, the companion bill reported by the House Committee on Merchant Marine and Fisheries. We believe this legislation initiates the vital step in determining and promoting the health of marine mammal populations by providing for more effective and coordinated responses to strandings and unusual mortality events involving marine mammals.

The impetus for this legislation were the responses to events such as the Atlantic coast bottlenose dolphin (*Tursiops truncatus*) die-off and the unusual mortality of 14 humpback whales (*Megaptera novaeangliae*) in Cape Cod Bay during 1987-1988. While the marine mammal mortalities in both events were theoretically attributed to the biotoxins, brevetoxin and saxitoxin respectively, these two events demonstrated that we currently lack sufficient data relative to the health of marine mammal populations. We are especially ignorant about the relationship of health trends to the potential effects of biological, chemical, and physical parameters. Further, these events underscored the need for more effective and coordinated response efforts between National Marine Fisheries Service and stranding network participants.

Positive results that can emerge from tragic events such as these are the expansion of our knowledge about marine mammals and the environment in which they live. With more recent stranding and unusual mortality events, we have learned we must improve our ability to gather and disseminate information from the experiences and research of network participants, government and university scientists, managers, veterinarians, and others so that we can learn from one another and begin to ascertain why strandings and these events occur. We believe the proposed legislation provides an effective mechanism to improve our response to strandings and unusual mortality events, aid in our determination of the causes of these events, and link response volunteers, researchers, and managers from coast to coast, through the Marine Mammal Health and Stranding Response Program. The Marine Mammal Health and Stranding Response Program will:

- 1) facilitate collection and dissemination of reference data on marine mammal health, strandings, and life history;
- 2) gather information on the procedures and practices for rescuing and rehabilitating stranded marine mammals and collecting, preserving, labeling, and transporting tissues for chemical and biological analyses;
- 3) correlate data on the health of marine mammals in the wild with available data on physical, chemical, and biological environmental parameters and reference data from the National Marine Mammal Tissue Bank;
- 4) coordinate effective responses to marine mammal unusual mortality events through the establishment of a marine mammal unusual mortality event working group, development of a contingency plan to respond to unusual mortality events, and designation of an onsite coordinator;
- 5) compensate stranding network participants for special costs incurred in responding to an unusual mortality event through the Unusual Mortality Event Activity Fund; and
- 6) establish a National Marine Mammal Issue Bank that will provide reference data from theoretically "healthy" marine mammal tissues collected from animals taken in subsistence hunts, incidentally caught in commercial fisheries, or from bi-

opsies during permitted scientific research, such tissues would be available for comparison with tissues collected for the issue Bank from stranded or unusual mortality event animals.

COLLECT AND DISSEMINATE DATA

Over the 20 years since the passage of the Marine Mammal Protection Act, stranding networks have provided a vital source of scientific information about marine mammal health, both through individual research and with cooperative ventures with academic institutions. However this information is scattered throughout the scientific literature, Federal agency documents, abstracts, and partially completed research at individual institutions. We posit that gathering and disseminating this information will aid the overall understanding of marine mammal health and life history, and facilitate the determination of the causes of marine mammal strandings and unusual mortality events.

GATHER INFORMATION ON PROCEDURES AND PRACTICES

The legislation proposes developing objective criteria for determining when an animal can be returned to the wild, and gathering information on procedures and practices for rescuing and rehabilitating marine mammals and for handling marine mammal tissues. We believe that by undertaking such tasks the Secretary would establish an essential information exchange between the stranding network participants themselves and the National Marine Fisheries Service that heretofore has only been provided by professional societies and small telephone or computer networks developed by individuals. A comprehensive source of procedures, practices, and objective criteria in these areas would provide interested stranding network participants with guidance for day-to-day response to strandings, information for training volunteers, and recommended procedures that could facilitate standardizing data and tissue collection, the absence of which has proven an obstacle to comparing stranding data collected from different regions of the country, one to another.

CORRELATE MARINE MAMMAL HEALTH DATA WITH OTHER ENVIRONMENTAL PARAMETERS

For more than a decade the National Oceanographic and Atmospheric Administration has conducted environmental assessment programs such as the Status and Trends Program. The Environmental Protection Agency's compliment is the near-coastal component of the Environmental Monitoring and Assessment Program. Both programs use species such as mollusks and groundfish as indicators of ecosystem health. Unlike these sentinel organisms, marine mammals as highly migratory species, could serve as indicators of global ecosystem health. Linking information about the health of the nearshore environment with the inhabitants of both coastal waters and the deepwater oceans provides a critical connection between our understanding of the health of the marine ecosystem and the causes of unusual mortality events. Finally, compiling available data on other physical, chemical, and biological environmental parameters could facilitate the veterinary and scientific community's ability to determine the impact of these parameters on the health of marine mammals.

COORDINATE EFFECTIVE RESPONSE TO MARINE MAMMAL UNUSUAL MORTALITY EVENTS

The legislation proposes establishing a marine mammal unusual mortality event working group to determine when an unusual mortality event has commenced and concluded, and to develop a contingency plan for responding to an unusual mortality event. Further, the legislation proposes that the working group will contain a diverse representation of individuals from disciplines such as marine science, marine mammal science, marine mammal veterinary and husbandry science, and marine conservation. We applaud initiating an approach that enlists the participation of individuals with first-hand experience in marine mammal strandings and science in the decision-making and planning process. Such an approach will undoubtedly improve our ability to determine when a unusual mortality event is occurring, initiate a clear and coordinated course of action, and hopefully determine the possible cause or causes of the event.

Furthermore, the proposed contingency plan will provide the first comprehensive guide for responding to an unusual mortality event. In developing the contingency plan, the marine mammal unusual mortality event working group and public reviewers will be obliged to review past successes and failures in our response to unusual mortality events and assimilate this information into a document that will ensure rapid and effective responses to unusual mortality events. The contingency plan should identify persons, including stranding network participants, who can assist the Secretary in implementing a coordinated and effective plan; describe the

types of tissues and tissue analyses necessary to assist in diagnosing causes of unusual mortality events; establish procedures for training, mobilizing and using available personnel, facilities, and other resources.

Finally, the designation of an onsite coordinator is critical, the experience of the EXXON Valdez oil spill and previous unusual mortality events exhibits the need for the designation of one individual whose sole responsibility is to coordinate the efforts of stranding network participants and volunteers, act as a liaison with the relevant federal agencies, and oversee public relations. The designation of a onsite coordinator will enable the response to operate smoothly and allow individuals to concentrate their efforts in their areas of expertise.

COMPENSATE STRANDING NETWORK PARTICIPANTS FOR SPECIAL COSTS

The Center for Marine Conservation staff are themselves stranding network participants in conjunction with Marine Mammal Protection Act Section 112(c) letters of agreement held by the Virginia Institute of Marine Science and the Florida Department of Natural Resources. As stranding network participants, we personally fund our responses to day-to-day stranding events involving dead marine mammals and sea turtles. Nonetheless, unusual mortality events place an additional and often unforeseen burden on our already tight budget constraints. While we recognize that the legislation can and does not provide funding for day-to-day response to strandings, we nevertheless welcome the establishment of the Unusual Mortality Event Activity Fund. The Fund would be available to compensate stranding network participant for "special costs" incurred in responding to an unusual mortality event, and for "preparing and transporting" tissues collected for the Tissue Bank either in an unusual mortality event or contracted study. This funding should furnish some relief from the financial burden that accompanies these events.

ESTABLISH A MARINE MAMMAL TISSUE BANK

Stranding networks have collected marine mammal tissues for scientific research for almost twenty years. Stockpiles of tissues exist at stranding network facilities, aquariums, zoos, academic institutions, clinical laboratories, and federal agency laboratories around the country. However, because of differences in collection methods, preservation, and quality control measures the quality of these tissues may not be adequate to produce reliable and comparable toxicological data. Therefore the National Marine Mammal Tissue Bank provides for the first time strict, standard, quality-controlled guidance for the collection, preservation, transportation, and biological and chemical analyses of marine mammal tissues. Further, it establishes dedicated efforts to acquire tissues from theoretically "healthy" marine mammals for use as reference level data and for comparison with marine mammal tissues from strandings and unusual mortality events. We believe that this level of quality control and the availability of reference data are the only reliable means to determine the causes of unusual mortality events, as well as the health and health trends of marine mammal populations.

In conclusion, some of our staff, in responding to the previously-mentioned unusual mortality events and strandings, experienced first-hand the frustration engendered by ineffectual response, the lack of coordinated scientific information and reference data, and our inability to unequivocally determine the causes of these events. We strongly support S. 1898 and the efforts of the stranding network participants and volunteers that assist them. We hope that Congress will continue elevating the scientific efforts of these networks both publicly and in the Appropriations process. We can no longer overlook the role of marine mammals as indicators of the health of the marine environment. Although this legislation will amend the Marine Mammal Protection Act, the information it generates may protect our marine environment and ultimately ourselves. We thank you again for the opportunity to respond to this timely of issues, S. 1898, the Marine Mammal Health and Stranding Response Act.

PREPARED STATEMENT OF BRUCE MCKAY, GREENPEACE

On behalf of the 1.8 million supporters of Greenpeace in the United States and 5 million worldwide, I want to thank you for giving us the opportunity to present our views on S. 1898, the Marine Mammal Health and Stranding Response Act. We believe that this legislation will help us further our goal of assessing the health of marine mammal populations off our coasts and deserves swift enactment into law.

In recent years there has been an increasing number of unusual environmental events and trends occurring within U.S. coastal waters. These include a number of large-scale disease events and die-offs, and population declines, of a variety of spe-

cies including seals and sea lions, whales, dolphins, seabirds, fish and coral. These events coincide with a wide range of changing environmental conditions consistent with increasing human populations along coastal environments. These conditions include, but are not limited to, rapid shifts in relative fish species abundance as a result of commercial fishing pressure, contamination of species on all trophic levels with environmental pollutants, massive increases in nutrient loading, changes in estuarine hydrological systems, wetland loss and erosion of coastal barriers, significant increases in the frequency and distribution of noxious algal blooms, changes in species compositions and relative abundances as a result of accidentally introduced species, and wildlife disturbance from a wide range of commercial and recreational activities. The predicted effects of global climate change, both from warming and increased UV-B radiation, now need to be factored into the overall stresses that are presently occurring.

It is within this scenario that there have been a number of recent marine mammal mass mortality events and population declines in U.S. waters during the past five years. Since the beginning of March of this year over 200 bottlenose dolphins, mostly adults, have washed ashore along a relatively small section of the Texas coast (between Corpus Christi and Matagorda Bay). During the first four months of 1990, 270 dead bottlenose dolphins were found along the U.S. portion of the Gulf of Mexico; this was more than double the amount found during all of 1989. A cause to both of these mortality events has not been ascertained.

During 1987/88, at least half of the east coast inshore population of bottlenose dolphins succumbed to massive bacterial infection in a highly-publicized mass mortality event. The causes behind this event still remain controversial; the NMFS investigation was the subject of a Merchant Marine and Fisheries sub-committee oversight hearing in 1989. Also during 1987/88, fourteen humpback whales died within a month in Cape Cod Bay. An investigation suggested that a potent "red tide" poison, saxitoxin, had been vectored via contaminated mackerel to the whales.

Other troubling conditions are occurring. Harbour seals on Tugidak Island in the Gulf of Alaska have declined by about 85 percent, that is from approximately 12,000 animals to under 2,000, between 1976 and 1988. There are also reduced numbers of harbour seals at Kodiak Island, Prince William Sound and the southeastern Bering Sea. There have been significant declines of Stellar sea lions, over 60 percent in just 5 years, and still declining, in the eastern Aleutian Islands and the western Gulf of Alaska and possibly a decline of northern fur seals on St. Paul Island. Limited food availability because of fish stock over-exploitation is, undoubtedly the most important factor in these declines. Meanwhile, manatee in Florida, one of the most endangered, marine mammals in coastal waters of the U.S. with a population of around 1,200, is dropping at a rate of 10 percent a year.

Harbour porpoise populations on both the east and west coasts have also declined dramatically during the last 20 years. Incidental takes in gillnet fishery operations and environmental contaminants are likely the main factors.

Anthropogenic contaminants are of major concern in U.S. coastal waters indeed, contaminants are well-documented wildlife stressing agents and chemically-induced epizootics (i.e. epidemics) have been suspected for several marine mammal populations in the U.S. and Europe. Of particular concern are the chlorinated hydrocarbons (CHs) because of their ubiquity, environmental persistence, and demonstrated acute and chronic toxicity to a wide range of laboratory animals and wildlife. Many bioaccumulate in living tissue with bioconcentration factors reaching thousands of times higher than outside mediums. For example, PCBs can accumulate in marine mammal tissue thousands of times higher than the water in which the marine mammal lives. Significant levels of CHs have been found in many U.S. marine mammals including gray whales, Stellar sea lions, harbour porpoise, sea otters, harbour seals, polar bears and bottlenose dolphins. PCBs, a CH of primary concern and in widespread circulation, effects the liver and skin and the functions of the nervous, reproductive and immune systems. The inhibition of immune system function by PCBs in reduced populations of St. Lawrence beluga whales has been suggested by scientists as one reason for these animals' high susceptibility to disease. Experimental evidence indicates that PCB-contaminated fish causes immunosuppression in harbour seals. Recent research also strongly shows that various contaminants (eg. certain PCBs, DDT, HCB, dioxin, cadmium, lead, mercury and organotins to name but a few) can disrupt the endocrine system of animals including marine mammals and humans. The consequences of such disruption can be profound because of the crucial role hormones play in controlling development. Some of the effects on mammals by endocrine disruptors include decreased fertility, metabolic abnormalities, demasculinization and feminization of male species, and compromised immune system function.

In recent years marine biotoxins have been implicated not only in humpback whale mortality as mentioned earlier but also in Hawaiian monk seals (1980), Florida manatee (1982) and, in a controversial judgment, east coast bottlenose dolphins (1987). At the same time there is convincing evidence of a global and U.S.-region increase in the frequency, distribution and magnitude of toxic phytoplankton blooms.

The coincidence of marine mammal food items with toxic alga can clearly occur. If algal toxins at high-enough concentrations do have the ability to weaken or kill marine mammals upon their ingestion then one should assume that increases in temporal, and spatial parameters of toxic dinoflagellate activity will exacerbate any naturally occurring impacts. Toxin poisoning events of marine mammals may occur, however often, simply as a component of natural processes. These could, from an evolutionary perspective, be assumed to have a relatively minor, impact on numbers in healthy populations. However, many marine mammal populations are not only depleted from historical levels but face increasing stress from numerous human activities. Within this context reduced populations (eg. north Atlantic right whales) may not have the ability to withstand a large-scale poisoning event; and stressed or weakened populations (eg. east coast bottlenose dolphins) could have a reduced capacity to overcome any stress associated with toxin-contaminated food. Numerous human activities, then, have the potential to threaten the health of marine mammals and their populations. These include those associated with fisheries (reduced forage, entanglement), contaminant discharge (toxic chemicals, oil, pathogens), as a result of algal toxins (ie. from the effects of acid rain, sewage discharge, agricultural run-off, overfishing), or disturbance-related (eg. boat traffic, minerals exploration and mining). In some cases more than one activity may be combining to produce a cumulative negative impact on a marine mammal population.

Marine mammals can serve as an important indicator species of the overall health of coastal and oceanic environments. Those mammals which are top level predators can indicate contaminant exposure and effects over spatial, temporal and trophic scales. Greenpeace supports the proposed legislation in that it would be a significant step forward towards understanding not only the general health of marine mammal populations but of their environment as a whole. This information should facilitate environmental protection strategies while providing clues to the recent spate of mass mortalities occurring in U.S. waters and elsewhere. In this regard, the proposed legislation will set the foundation for alignment with the recent recommendations (1991) of the United Nations scientific Advisory Committee of the Marine Mammal Action Plan. The Committee in their report (UNEP/OCA/MM WG.4/9; Annex V) stated there is a recognition of "the immediate need * * * to assess the health status of marine mammal populations and to determine the relative importance of the various environmental factors implicated in the deterioration of marine ecosystems."

Recent die-off events, increased numbers of individual strandings, and generally declining marine mammal populations are significant causes for concern and need to be addressed accordingly. The proposed legislation is timely and will provide a foundation for an aggressive marine mammal health assessment program which is a critical element in future comprehensive protection strategies for marine mammals and the overall marine environment.

Thank you once again for the opportunity to present our views and we look forward to working with the committee to generate the necessary support for passage of this critical legislation before the end of this Congress.

PREPARED STATEMENT OF GREENPEACE

On behalf of Greenpeace and its more than two million supporters in the United States and five million supporters worldwide, I would like to thank the distinguished Chairman and members of this committee for the opportunity to submit our views on this complex issue of commercial purse seine fishing and protection of marine mammals and the ocean ecosystem. Greenpeace has for many years taken an active role in seeking solutions to this complex international environmental, technological, economic and social problem.

THE ENVIRONMENTAL PROBLEM TODAY

Commercial purse seining for tuna has changed dramatically over the last two decades. Through the late 1970s and 1980s, commercial purse seining became the single most effective technology for harvesting tuna, which remains a principle sea-food commodity on the world market. Today, commercial purse seiners harvest more than 50 percent of the almost three million tons of tuna extracted from the world's

oceans. Nearly 600 commercial purse seiners from nations across the globe operate on the high seas and inside exclusive economic zones.

The growth and expansion of the international commercial tuna, purse seine industry has brought along with it a range of environmental problems. The total world catch of tuna has almost doubled in less than a decade and international development agencies report that all major species of tuna, except perhaps skipjacks are over-exploited. In the only fishery where substantial onboard observer coverage has existed to monitor the industries impact on the ocean, an estimated, seven million dolphins have died since the late 1950s. Greenpeace helped to demonstrate that both the eastern spinner and northern offshore spotted dolphin stocks have, been reduced to mere fragments of their former populations—enough so to warrant listing as "depleted" under the U.S. Marine Mammal Protection Act. Just as disturbing are the reports emerging from other commercial, purse seine fisheries where tunas and dolphins swim together that unselective and unmonitored encirclement is resulting in marine mammal mortality of unknown magnitude. In addition, there are reports of turtles, sharks and non-target fish as bycatch in virtually all areas where purse seining occurs. In short, we face a global fisheries crisis.

To address this complex problem, we must formulate systematic solutions that are multilateral in nature and global in scope. Strategies that, do not reinforce and strengthen international programs of regulation, monitoring and enforcement, but instead imply that the scope of the problem involves only one species and one ocean fishery, will generate more environmental destruction in the world's oceans. We must guard against allowing the political need to find short term fixes on paper to undermine our ability to implement workable programs for long term, environmental protection.

Ultimately, strategies that undermine international mechanisms, of control, monitoring, enforcement and investment into new environmentally sound technologies could result in driving the fisheries problems further out of sight and out of mind. We must act quickly to ensure that programs do not result in more reflagging, fleet migration to the South Pacific and other oceans, overfishing, more, unknown and underground illegitimate methods of catching tuna and emerging black markets for tuna.

Greenpeace is an international environmental group. We are concerned with and advocate policies that address all the critical environmental challenges. While we remain very concerned about dolphins, we are also concerned about other marine life, its habitat and the need to protect the diversity and balance of marine ecosystems. It is important that programs designed achieve this goal do not inadvertently drive the fishery or the market underground, or result in new environmental problems for other dolphin populations, marine species or fishy stocks. Greenpeace does not want to have to return to this esteemed Committee not long from now with dire news about the collapse of tuna stocks around the world, the further peril facing other dolphin populations, the jeopardizing of sharks or turtles—all because of the unknown and uncontrolled impacts of the commercial purse seine industry. We encourage each distinguished member of this Committee to embrace, far sighted strategies for solving these environmental problems.

SOLUTIONS

Today, the U.S. Congress has before it two proposals for addressing the environmental problem known as tuna/dolphin. One proposal seeks to establish a five-year global moratorium on dolphin encirclement with the only explicit enforcement mechanism being a series of unilateral embargoes.

Many of the provisions in this proposal are positive steps. Sections of the legislation that extend control over the U.S. fleet's operations, reinforce 100 percent onboard observer coverage and mandate and authorize funding for new technologies research are critical and far sighted indeed. It is unfortunate, however, that this proposal does not promote or codify international enforcement and public participation mechanisms, two components we feel are essential for long term success.

The second proposal seeks to codify in national law the Intergovernmental Agreement reached in June of 1992 by the ten nations operating fleets in the Eastern Tropical Pacific ocean. This proposed legislation also includes blanket embargo provisions. While it addresses important components of the international accord, it fails to phase out dolphin encirclement or account for the global nature of this problem.

Greenpeace has maintained for many years that what is required is an international, holistic, equitable and pragmatic approach to real solutions to this problem. The following components must be present for any solution to be considered, an honest and credible approach to environmental conservation.

1. A phase out of the encirclement of dolphins wherever it may occur and the introduction of environmentally sound fishing technologies.

No ban on encirclement of marine mammals will work without accompanying international systems of regulation, monitoring, enforcement, control and public release of information. The U.S. Congress has the ability to take leadership in the establishment of such systems. Already, the international community attending the United Nations Conference on Environment and Development (UNCED) in Brazil, and the 66 nations attending the Cancun Conference on Responsible Fishing have initiated the process of establishing such regimes. What is needed is the adoption of a precautionary approach to commercial high seas fisheries.

1a. The International Accord.

In April and June of 1992, the ten nations operating in the Eastern Pacific ocean met and developed an accord to which all governments, including Mexico, Venezuela, Vanuatu and the United States, became signatories. This accord was called the Intergovernmental Agreement. It is independent of the IATTC, but the Tuna Commission will be the administering scientific body. Mexico and other nations that may not yet be members of the IATTC signed this accord and are fully bound by it.

One shortcoming of the Intergovernmental Agreement is its failure to set a timeline for phasing out dolphin encirclement and phasing in alternatives that include new technologies, seasonal fishing and other fishery conversion approaches. Greenpeace applauds the recognition in Sen. Kerry's proposal before you that deliberate encirclement of dolphins must be ended. We would also support attempts to accomplish such a phase out in a timeframe that reinforces the international programs, of public review and enforcement, and in a manner that provides incentives for fleet conversion.

For the first time in the history of this problem, an international review panel was established that will involve the environmental community in enforcement. In addition, the first equitable international program of research been established and here again Greenpeace worked hard to ensure public participation.

This Intergovernmental Agreement is one step. The U.S. Congress has the opportunity to promote an international system of environmental conservation coordinated for all five major commercial purse seine fisheries. This will help to ensure that dolphin encirclement prohibited for one fleet in one ocean is also prohibited for other fleets in other oceans by strengthening the resolve of other regional bodies in the western Pacific, Atlantic and Indian oceans where tunas associate with dolphins and whales.

1b. Beyond the ETP.

Much information is available about dolphin encirclement in the Eastern Tropical Pacific ocean fishery. Little information is available, however, about this problem in other fisheries. This is not surprising given the history of secrecy that the fishing industry constructs around its activities. The practice of encircling dolphins in the Eastern Pacific ocean had occurred for a decade before a U.S. scientist in the early 1970s documented, the practice and its consequences. The association between dolphins and tuna in other oceans exists. Scientists, observers and some (but few) fishing boat captains have reported the occurrence of encirclement of both whales and dolphins. Sharks, and other slow reproducing animals, also are caught up in unselective uses of purse seine nets. Horrifying pictures of dead dolphins hanging from purse seine nets in the Atlantic are emerging. Absent international observer coverage on all the nearly 600 purse seiners in the world, one can only imagine the magnitude of a problem that will not stay out of sight and out of mind forever.

The European Commission, recognizing the existence of the problem, took a small step by unanimously approving an amendment to the common Fisheries Policy to prohibit encirclement of marine mammals by EC vessels. What is needed now is more coordination of these actions on an international scale. We must seek strategies as equal partners with the world's peoples.

2. Adequate International Enforcement Mechanisms:

Strategies to bring about solutions necessarily involve the development of international mechanisms of control and public participation. In the case of tuna/dolphin, it is not sufficient to look to unilateral trade sanctions or closing of industrialized markets to fish from one fishery as the only tools available. This focus could exacerbate our nation's political isolation on the international stage and will not bring about the radical reform that is needed.

Tuna is a primary and cheap source of protein for many people, especially those in Latin America and the purse seine fleet is now supplying the dramatically expanding internal markets of Mexico and Venezuela. Seeking to choke off markets through boycotts or embargoes has resulted in eliminating both the cooperation and incentive driven programs needed to solve this fishery crisis. A fishery where almost

300,000 tons of tuna are available will not be left alone. We should match our desire to stop accepting tuna caught on dolphins with incentives to bring about new environmentally sound fishing techniques and regulatory programs.

There are more effective alternatives, which would bring this problem under control. We must reinforce and stimulate international enforcement provisions such as international vessel and skipper registries developed by regional bodies such as the Forum Fisheries Agency in the South Pacific and coupled with registries administered by the IATTC and International Convention for the Conservation of Atlantic Tunas (ICCAT). We must work with nations to design standardized penalty provisions that mandate the elimination from fisheries of criminal vessels, skippers and nations that fail to abide by regulation or are not members of registries. We must reinforce programs that are accountable to the citizens of the world. Observer coverage onboard vessels, review panels open to non-governmental organizations, public release of credible information and strict multilateral trade sanctions when regulations have been ignored are all better and more equitable ways of addressing these problems.

Regional bodies incorporating strict environmental regulations must be coordinated within a high seas fisheries regime. Only this way can we get a grip on the destructive commercial fishing practices that are killing dolphins and other marine life, on reflagging, fleet migration and over fishing and the chronic practice of covering up huge tonnages of waste in fisheries. Only through mechanisms such as these will we ensure that destructive fishing is not driven out of sight and out of mind, thus effectively stimulating destructive fishing and black markets. Only through holistic mechanisms that deal with the complex aspects of the problems can we avoid a breakdown of marine systems and the delicate life of the sea.

3. *Comments on Trade Agreements and the Environment*

A comment should be made about the problems associated with trade and the environment in relation to the General Agreement of Tariff and Trade (GATT) and the North American Free Trade Agreement (NAFTA). Such trade agreements will forever seek to subordinate environmental conservation to the demands of centralized and open trading systems in which multilateral corporations wield inordinate power. Suspending embargoes for two years followed up by the imposition of blanket sanctions of all fish products whether in a series of applications or all at once, may work in the short term to quiet domestic and international battles and clear the way for passage of trade agreements. However, if real attention is not paid to, at a minimum, the negotiation and phase in of international and regional environmental enforcement mechanisms, the ugly head of trade agreements will arise to attempt to demolish environmental standards. Internationally agreed and articulated enforcement mechanisms written into environmental agreements is the only way to ensure that the GATT and the NAFTA are subordinated to equitable, consistent and far reaching environmental conservation of the oceans.

LETTER FROM BRAD GILMAN, WASHINGTON COUNSEL, CAMPBELL SHIPYARDS, SAN DIEGO AND MARCO SEATTLE, INC.

JULY 23, 1992.

The Honorable FRITZ HOLLINGS,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR HOLLINGS: Campbell Shipyard, San Diego and Marco Seattle, Inc. would like to submit the following comments in support of the International Dolphin Preservation Act introduced by Senator Breaux on July 21.

Campbell Shipyard has been involved in the construction and repair of tunaboats for the U.S. fleet for six decades. Marco manufactures winches, purse seine power blocks and other equipment for the fleet. The two companies collectively employ many hundreds of people in California and the State of Washington whose livelihoods are dependent on the continuation of a U.S. tuna fleet. Campbell and Marco were therefore alarmed by the potential impact of H.R. 5419, as passed by the House Merchant Marine and Fisheries Committee, on the U.S. fleet.

A blanket moratorium on the encirclement of dolphins starting in March, 1994 would force the U.S. vessels operating in the Eastern Tropical Pacific to discontinue their operation on those fishing grounds. Such an action would force the U.S. vessel owners either to locate solely in the Western Tropical Pacific or to sell their vessels to foreign buyers. Under either scenario, Campbell and Marco are directly harmed because much of the shipyard and manufacturing business is contingent on the operations of the U.S. vessels fishing in the ETP.

The U.S. fishing shipyards are already being hard hit by a dramatic downturn in the amount of construction, conversion, and repair work in the fishing industry. The loss of significant amounts of repair work involving the tunaboat fleet serves only to aggravate this eroding economic situation, a situation already jeopardizing the very existence of the small yards on the West coast. Campbell and Marco do not feel the conservation benefits of an immediate moratorium on the encirclement practice outweigh the adverse economic costs to the tunaboat fleet and their support industry. This is especially true when considering that the legislation introduced by Senator Breaux is a viable alternative which has a basis in international agreement and significantly reduces dolphin mortality during this decade.

Specifically, the Breaux bill would codify the resolution recently adopted by the Inter-American Tropical Tuna Commission in June to force a phased reduction in lethal takes of dolphin from a 25,000 animal level of 1992 to less than 5,000 animals by 1999. This reduction would apply to all of the fleets fishing in the ETP, including the United States, Mexico and Venezuela. The lethal takes by the U.S. fleet are already less than 1000 dolphins, and this number would drop to de minimis levels under the IATTC timeframe. The advantage of the Breaux bill over the Kerry bill is that it provides a reasonable amount of time for the maturation of the ongoing scientific research aimed at developing methods of fishing for large yellowfin tuna which do not involve dolphin encirclement. Campbell and Marco strongly believe that the good performance of the U.S. industry in reducing dolphin mortality over the last ten years should be rewarded by giving our fleet time to make the final transition.

Campbell and Marco appreciate this opportunity to provide public comment on the tuna/dolphin issue and urge the Members of the Senate Commerce Committee to act favorably in support the Breaux alternative.

Sincerely,

BRAD GILMAN,

Washington Counsel, Campbell Shipyards, San Diego and Marco, Seattle, Inc.

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